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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 102

ADMIRAL DEWEY ADAMSON, APPELLANT,

vs.

PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED MAY 7, 1946.

SUPREME COURT OF THE UNITED STATES

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

S. C. No. 98734

INFORMATION

Murder—Count I.
Burglary—Counts II, III, IV and V.
2 Priors.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

VS.

ADMIRAL DEWEY ADAMSON, Defendant

INFORMATION

Count I

The said Admiral Dewey Adamson is accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Murder a felony, committed as follows: That the said Admiral Dewey Adamson on or about the 24th day of July, 1944 at and in the County of Los Angeles, State of California, did willfully, unlawfully and feloniously and with malice aforethought murder one Stella Blauvelt, a human being.

Count II

For a further and separate cause of action, being a different offense from, but connected in its commission with, the charge set forth in Count I hereof, the said Admiral Dewey Adamson is accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Burglary, a felony, committed as follows:

That the said Admiral Dewey Adamson, on or about the [fol. 2] 24th day of July, 1944, at and in the County of Los Angeles, State of California, did willfully enter the room and apartment occupied by Stella Blauvelt, located at number 744 South Catalina, in the City of Los Angeles, County

and State aforesaid, with the intent then and there and therein to unlawfully and feloniously commit theft.

Count III

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charge set forth in Count II hereof, the said Admiral Dewey Adamson is accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Burglary, a felony, committed as follows:

That the said Admiral Dewey Adamson, on or about the 10th day of June, 1944, at and in the County of Los Angeles, State of California, did willfully enter the house and building occupied by Frank Hokr, located at number 1962 West 27th Street, in the City of Los Angeles, County and State aforesaid, with the intent then and there and therein to unlawfully and feloniously commit theft.

Count IV

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charges set forth in Counts II and III hereof, the said Admiral Dewey Adamson is accused by the District [fol. 3] Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of Burglary, a felony, committed as follows:

That the said Admiral Dewey Adamson, on or about the 16th day of May, 1944, at and in the County of Los Angeles, State of California, did willfully enter the house and building occupied by Mrs. Lloyd Goble, located at number 961 South Oxford, in the City of Los Angeles, County and State aforesaid, with the intent then and there and therein to unlawfully and feloniously commit theft.

Count V

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charges set forth in Counts II, III and IV hereof, the said Admiral Dewey Adamson is accused by the District Attorney of and for the County of Los Angeles, State

of California, by this information, of the crime of Burglary, a felony, committed as follows:

That the said Admiral Dewey Adamson, on or about the 10th day of August, 1944, at and in the County of Los Angeles, State of California, did willfully enter the house and building occupied by C. E. Mourning, located at number 1566 West 27th Street, in the City of Los Angeles, County and State aforesaid, with the intent then and there and therein to unlawfully and feloniously commit theft.

That before the commission of the offenses hereinabove [fol. 4] set forth in this information, said defendant Admiral Dewey Adamson was, in the Circuit Court of the State of Missouri, in and for the County of Jackson, convicted of the crime of Burglary and Larceny, and the judgment of said Court against said defendant, in said connection, was, on or about the 3rd day of February, 1920, pronounced and rendered, and said defendant served a term of imprisonment therefor in the State Prison.

That before the commission of the offenses hereinabove set forth in this information, said defendant Admiral Dewey Adamson was, in the Circuit Court of the State of Missouri, in and for the County of Jackson, convicted of the crime of Robbery, a felony, and the judgment of said Court against said defendant in said connection, was, on or about the 30th day of June, 1927, pronounced and rendered, and said defendant served a term of imprisonment therefor in the State Prison.

The former convictions herein alleged against said defendant, Admiral Dewey Adamson, are hereby charged against him with respect to each of the counts hereinbefore set forth, and by reference the same are hereby made a part of said counts.

Fred N. Houser, District Attorney, of and for the County of Los Angeles, State of California. By Kenneth J. Thomas, Deputy.

[fol. 5] (Endorsed) S. C. No. 98734. D. A. No. 115823. In the Superior Court of the State of California in and for the County of Los Angeles: The People of the State of California, Plaintiff vs. Admiral Dewey Adamson, Defendant. Information Murder—Count I. Burglary—Counts II, III, IV, V. 2 Priors. Filed in open Superior Court of the County of Los Angeles, State of California, on motion of

the District Attorney of said Los Angeles County. Dated: Sep. 14, 1944. J. F. Moroney, Clerk. By G. E. Hubbard, Deputy. Fred N. Howser, District Attorney.

[fol. 6] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

MINUTE ENTRY—September 18, 1944

Deputy District Attorney Charles Matthews and the defendant without counsel, present:

The Public Defender is appointed by the Court as counsel for the defendant.

The defendant is duly arraigned, states his true name to be as charged in the information, waives reading of the information and time to plead, regularly enters his plea of "Not Guilty as charged in each count of the information", denies each prior conviction as alleged therein and the trial of the action is thereupon set for November 9, 1944 at 9:00 A. M. and transferred to Department 43.

[fol. 7] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

MINUTE ENTRY—October 3, 1944

Deputy District Attorney S. Ernest Roll and the Defendant with his counsel, Deputy Public Defender R. F. Bird, present.

The Public Defender is allowed to withdraw as counsel for the defendant.

[fol. 8] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

MINUTE ENTRY—November 14, 1944

Cause is called for trial as to Counts 1 and 2 of the information.

Deputy District Attorney S. Ernest Roll and the Defendant with his counsel, Morris Lavine by Milton B. Safier, present.

Defendant admits each prior conviction as alleged in the information as follows: Burglary and Larceny, convicted in the Circuit Court of the State of Missouri, Jackson County, upon which judgment was rendered on or about February 3, 1920 and admits having served a term of imprisonment in the State Prison and Robbery, convicted in the Circuit Court of the State of Missouri, Jackson County, upon which judgment was rendered on or about June 30, 1927 and admits having served a term of imprisonment therefor in [fol. 9] the State Prison.

Jury is in process of impanelment.

Prospective Jurors are admonished and trial is continued to November 15, 1944, at 9:30 A. M.

[fol. 10] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

MINUTE ENTRY—November 15, 1944

Trial is resumed.

Deputy District Attorney S. Ernest Roll and the Defendant with his counsel, Milton Safier, present.

It is stipulated that the prospective jurors are in attendance.

The following jurors are sworn to try the cause:

Mrs. Frances F. McKellar, Mrs. Luella M. Dooley, Mrs. Elizabeth K. Frohman, Mrs. Dorothea J. Schomner, Mrs. Doris L. Hayden, Mrs. Ruth M. Wilton, Mrs. Elizabeth Welsh, Mrs. Flora D. Smith, Mrs. Iva B. Dickie, Mrs. Lorene Yates, Mrs. Dorothy M. Mathis, Mrs. Gladys M. Faulkner.

It appearing to the Court that this case is likely to be a protracted one, It Is Ordered that two alternates be selected and Ralph W. Hickey and Mrs. Hazel B. Stewart are sworn as alternates.

[fol. 11] The Court now orders a daily transcript of the testimony.

Information is read and plea is stated.

The following witnesses are sworn and testify on behalf of the People: John W. Maurer, Dr. Frank R. Webb, Mrs. Maude B. Watts and Mrs. Eulalie Massey.

The Court now orders that Sgt. Harry Rogers of the Sheriff's Fingerprint Section, be and he is appointed under Section 1871 C. C. P. to examine certain fingerprints in this case.

Jury is admonished and trial is continued to November 16, 1944 at 9:30 A. M.

[fol. 12] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

MINUTE ENTRY—November 16, 1944

Trial is resumed.

Deputy District Attorney S. Ernest Roll and the Defendant with his counsel, Milton Safier, present.

It is stipulated that the Jurors and Alternates be in attendance.

The following witnesses are sworn and testify on behalf of the People: Frank H. Heck, Mrs. Mabel B. Vandiver, Ray H. Pinker, Robert Frick, Kenneth Osmon, James R. Ferguson, Mrs. Lillie H. Bailey and Mrs. Francis Jean Turner.

Jury is admonished and trial is continued to November 17, 1944 at 9:30 A. M.

[fol. 13] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

MINUTE ENTRY—November 17, 1944

Trial is resumed.

Deputy District Attorney S. Ernest Roll and the defendant with his counsel, Milton B. Safier, present.

It is stipulated that the Jury and alternates are in attendance.

The defendant moves orally for a new trial on Counts 3, 4 and 5. Hearing on said motion is continued to November 24, 1944 at 9:00 A. M.

7
The following witnesses are sworn and testify on behalf of the People: John B. Larbaig, Mrs. Catherine E. May and Harry W. Rogers.

Jury is admonished and trial is continued to November 20, 1944 at 9:30 A. M.

[fol. 14] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

MINUTE ENTRY—November 20, 1944

Trial is resumed.

Deputy District Attorney S. Ernest Roll and the Defendant with his counsel, Milton B. Safier, present.

It is stipulated that the jury and alternates are in attendance.

Harry Rogers resumes his testimony, John B. Larbaig is recalled and the following witnesses are sworn and all testify on behalf of the People: E. J. Long, Miss Marie Massey, Mrs. Isabel Turner, William H. Brennan and G. H. Wiseman.

People's Exhibits Nos. 1 and 2 (each a diagram), 3, 4, 8, 9, 10, 11, 12, 17, 18, 19, 21, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 36 and 37 (each a photo), 5 (electric cord), 6 (small door), 7 (beads), 13 (stocking foot), 14 and 15 (each a Handkerchief), 16 (napkin), 20 (negatives), 22, 23 and 30 (each a [fol. 15] fingerprint card) and 35 (stockings) are admitted and filed. The People rest.

Defendant rests.

Defendant's motion for an advised verdict of acquittal is denied.

Cause is argued. Jury is admonished and trial is continued to November 21, 1944 at 9:30 A. M.

[fol. 16] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

MINUTE ENTRY—November 21, 1944

Trial is resumed.

Deputy District Attorney S. Ernest Roll and the defendant with his counsel, Milton B. Safier, present.

It is stipulated that the Jurors and Alternates are in attendance.

The argument is resumed and completed. The Court instructs the Jury. The Sheriff is sworn to take charge of the Jury, which retires to deliberate at 3:30 P. M. At 5:00 P. M. the Jury not having arrived at a verdict, the Sheriff is ordered to escort the Jurors to the Rosslyn Hotel for the night to return to the Jury Room for farther deliberations on November 22, 1944.

[fol. 17] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

MINUTE ENTRY—November 22, 1944

Trial is resumed.

Deputy District Attorney S. Ernest Roll and the defendant with his counsel, Milton B. Safer, present.

At 8:45 A. M. the Jury returns to the Jury room from the hotel for further deliberations and returns into Court at 2:35 P. M. with the following verdicts to-wit:

Title of Court and Cause

"We, the Jury in the above entitled action, find the defendant Guilty of Murder, a felony, as charged in Count #1 of the information, and find it to be Murder of the First Degree".

This 22nd day of November, 1944.

Iva B. Dickie, Foreman.

[fol. 18] "We, the Jury in the above entitled action, find the defendant Guilty of Burglary, a felony, as charged in Count #2 of the information, and find it to be Burglary of the First Degree".

This 22nd day of November, 1944.

Iva B. Dickie, Foreman.

Verdicts and Instructions are filed. Jury is polled and each Juror answers in the affirmative. Jury is excused.

Defendant makes motion for a new trial. The hearing on said motion and the pronouncing of judgment and sentence are set for November 27, 1944 at 9:00 A. M.

Defendant is remanded.

[fol. 19] IN SUPERIOR COURT OF LOS ANGELES COUNTY

INSTRUCTIONS TO JURY—Filed November 22, 1944

General Instruction

Jury To Be Governed Solely By Evidence

You are here, ladies and gentlemen, for the purpose of trying the issues of fact that are presented by the allegations in the *information* filed by the *District Attorney* and the defendant's pleas thereto. This duty you should perform uninfluenced by pity for the defendant or by passion or prejudice on account of the nature of the charges against him. You are to be governed therefore solely by the evidence introduced in this trial and the law as given you by the Court. The law will not permit jurors to be governed by mere sentiment, conjectures, sympathy, passion or prejudice, public opinion or public feeling. Both the public and the defendant have a right to demand, and they do so demand and expect, that you will carefully and dispassionately weigh and consider the evidence and the law of the case and give to each your conscientious judgment; and that you will reach a verdict that will be just to both sides, regardless of what the consequences may be, and which will express the individual opinion of each juror.

Given [as modified Refused]

Fricke, Judge.

[fol. 20]

General Instruction

Jury To Consider Evidence Only

You are the sole and exclusive judges of the weight of evidence and the credibility of witnesses, and it is your function to determine all questions of fact arising from the evidence in the case. It is the right of court and counsel to comment on the failure of defendant to explain or deny any evidence against him, and to comment on the evidence, the testimony and credibility of any witness; yet the jurors are the exclusive judges of all questions of fact submitted to them and of the credibility of witnesses.

But while you are the sole and exclusive judges of the facts and of the weight of evidence, you are to judge of the

[*Words enclosed in brackets erased in copy.]

facts upon the testimony and other evidence produced here in court. If any evidence has been admitted and afterwards stricken out, you must disregard entirely the matter so stricken out, and if any counsel has intimated by questions which the court has not permitted to be answered that certain things are, or are not true, you must disregard such questions and refrain from any inferences based upon them. If counsel, upon either side, have made any statements in your presence concerning the facts in the case, you must be careful not to regard such statements as evidence, and must look entirely to the proof in ascertaining what the facts are. If, however, counsel have stipulated or agreed to certain facts, you are to regard the facts so stipulated [fol. 21] to as being conclusively proven. If either party has during the trial admitted any fact or facts material to the matters involved in this case, such admission is to be deemed by you as proven against the party making such admission.

Given [as modified Refused]*

Fricke, Judge.

Evidence—Susceptible of Different Constructions

If the evidence in this case as to any particular count is susceptible of two constructions or interpretations, each of which appears to you to be reasonable, and one of which points to the guilt of the defendant, and the other to his innocence, it is your duty, under the law, to adopt that interpretation which will admit of the defendant's innocence and reject that which points to his guilt.

You will notice that in this instruction this rule of law is made applicable to cases in which there are two opposing interpretations, each of which appears to you to be reasonable.

This rule of law does not apply in a case where there are two opposing constructions sought to be placed upon the evidence, one of which appears to you to be reasonable and [fol. 22] the other appears to you to be unreasonable.

In the latter case it would be your duty, under the law, to adopt the reasonable construction and reject the one which, in your judgment, appears to be unreasonable.

Given [as modified Refused]*

Fricke, Judge.

[*Words enclosed in brackets erased in copy.]

Presumption of Innocence

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal but the effect of this presumption is only to place upon the state the burden of proving him guilty beyond a reasonable doubt. Reasonable doubt is defined as follows: "It is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral [fol. 23] certainty, of the truth of the charge."

~~Given~~ ~~has modified~~ Refused)*

Fricke, Judge.

Witness—Credibility of

The jury are the sole and exclusive judges of the effect and value of evidence addressed to them and of the credibility of the witnesses who have testified in the case: The character of witnesses, as shown by the evidence, should be taken into consideration for the purpose of determining their credibility and the facts as to whether they have spoken the truth. And the jury may scrutinize not only the manner of witnesses while on the stand, their relation to the case, if any, but also their degree of intelligence. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies; his interest in the case, if any, or his bias or prejudice, if any, against one or any of the parties, by the character of his testimony, or by evidence affecting his character for truth, honesty, or integrity, or by contradictory evidence. A witness may also be impeached by evidence that he has made, at other times, statements inconsistent with [fol. 24] his present testimony as to any matter material to the cause on trial [; and a witness may also be impeached by proof that he has been convicted of a felony.]*

A witness willfully false in one material part of his or her testimony is to be distrusted in others; that is to say,

[*Words enclosed in brackets erased in copy.]

the jury may reject the whole of the testimony of a witness who has willfully sworn falsely as to a material point; and the jury, being convinced that a witness has stated what was untrue as to a material point, not as a result of mistake or inadvertence, but willfully and with the design to deceive, may treat all of his or her testimony with distrust and suspicion, and reject all unless they shall be convinced that he or she has in other particulars sworn to the truth.

Given as Modified [Refused]*

Fricke, Judge.

Experts

Duly qualified experts may give their opinion on questions in controversy at a trial. To assist the jury in deciding such questions, the jury may consider the opinion with the reasons stated therefor, if any, by the expert who gives the opinion. The jury is not bound to accept the opinion of [fol. 25] any expert as conclusive, but should give to it the weight to which they shall find it to be entitled. The jury may, however, disregard any such opinion, if it shall be found by them to be unreasonable.

Given [as modified Refused]*

Fricke, Judge.

Circumstantial Evidence

In order to convict the defendant upon the evidence of circumstances it is necessary not only that all the circumstances concur to show beyond a reasonable doubt that a crime was committed as alleged in the information, but that the defendant was the one who committed such crime and that they are inconsistent with any other rational conclusion. It is not sufficient that the circumstances prove, coincide with, account for, and therefore render probable the theory sought to be established by the prosecution, but they must exclude to a moral certainty every other theory but the single one of guilt, or the jury must find the defendant not guilty.

People v. McClain, 115 Cal. App. 505.

Given [as modified Refused]*

Fricke, Judge.

[*Words enclosed in brackets erased in copy.]

[fol. 26] Circumstantial Evidence—Effect of

There are two classes of evidence recognized and admitted in courts of justice, upon either of which juries may lawfully find an accused guilty of crime. One is direct evidence, which is the direct testimony of any eyewitness to a transaction, and the other is circumstantial evidence, which includes all evidence other than that of an eyewitness. Such evidence may consist of any acts, declarations or circumstances admitted in evidence tending to prove the crime charged, or tending to connect the defendant with the commission of the crime.

If upon consideration of the whole case you are satisfied to a moral certainty and beyond a reasonable doubt of the guilt of the defendant, you should so find; irrespective of whether such certainty has been produced by direct evidence or by circumstantial evidence. The law makes no distinction between circumstantial evidence and direct evidence in the degree of proof required for conviction but only requires that the jury shall be satisfied beyond a reasonable doubt by evidence of either the one character or the other, or both.

Given [as modified Refused]*

Fricke, Judge.

[fol. 27] If you believe from all the evidence, beyond a reasonable doubt, that on or about the 24th day of July, 1944 at and in the County of Los Angeles, State of California, the defendant, Admiral Dewey Adamson was engaged in the commission of the crime of burglary, and that while in the commission of the said crime of burglary, he killed one Stella Blauvelt a human being, then you should find the defendant guilty of murder as charged in the information, and you should find it to be murder of the first degree.

Given [as modified Refused]*

Fricke, Judge.

Murder — Defined —

The defendant is charged in count 1 with the crime of murder.

Murder is the unlawful killing of a human being with malice aforethought.

Penal Code Sec. 187.

[*Words enclosed in brackets erased in copy.]

Such malice may be expressed or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied when no considerable provocation appears, or when the [fol. 28] circumstances attending the killing show an abandoned and malignant heart.

Penal Code Sec. 188.

All murder which is perpetrated by means of poison or lying in wait, torture, or by any other kind of willful, deliberate and premeditated killing, or which is committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary, or mayhem, is murder of the first degree, and all other kinds of murder are of the second degree.

Penal Code Sec. 189.

In dividing murder into degrees the legislature intended to assign to the first as deserving of greater punishment, all murders of a cruel and aggravated character, and to the second all other kinds of murder which are murder at common law, and to establish a test by which the degree of every case of murder may be readily ascertained. That test may be thus stated: Is the killing willful (that is to say, intentional), deliberate and premeditated? If it is, the case falls with the first, and if not, within the second degree. There are certain kinds of murder which carry with them conclusive evidence of premeditation; these the legislature has enumerated in the code definition already given you, and has taken upon itself the responsibility of saying that they shall be deemed and held to be murder of the first degree. These cases are of two classes:

First. Where the killing is perpetrated by means of [fol. 29] poison, torture or lying in wait. Here the means used is held to be conclusive evidence of premeditation.

Second. Where the killing is done in the perpetration, or attempt to perpetrate, burglary or some one of the other felonies enumerated in the statute, here the occasion is made conclusive evidence of premeditation. Where the case comes within either of these classes the test question: Is the killing willful, deliberate and premeditated? is answered by the statute itself, and the jury have no option but to find the prisoner guilty in the first degree. Hence so far as these two cases are concerned, all difficulty as to the question of degree is removed by the statute.

In determining the intention of the defendant at the time of the transaction complained of, it is important to consider the means used to accomplish the killing. The intent or intention is manifested by the circumstances connected with the offense, and the sound mind and discretion of the accused. All persons are of sound mind who are neither idiots, nor lunatics, nor affected with insanity.

Penal Code Sec. 21:

A person must be presumed to intend to do that which he voluntarily and willfully does in fact do, and must also be presumed to intend all the natural, probably and usual consequences of his own acts.

Given as Modified [Given as modified Refused]•

Fricke, Judge.

[fol. 30] The defendant is charged in Count 2 with burglary:

Any person who enters any house, room or apartment, with intent to commit grand or petty theft is guilty of burglary.

Penal Code, Section 459.

Given as Modified [Given as modified Refused]•

Fricke, Judge.

Murder—Penalty

The law of this State provides that every person guilty of murder in the first degree shall suffer death, or confinement in the state prison for life, at the discretion of the jury.

If you find that the defendant is guilty of murder in the first degree it will be your duty to fix the penalty. It is entirely for the jury to determine which of the two penalties is to be inflicted in case of murder in the first degree, the death penalty or confinement in the state prison for life. If the jury should fix the penalty as confinement in the state prison for life, you will so indicate in your verdict. If, however, you fix the penalty at death, [fol. 31] you will say nothing on this subject in your verdict, nor will you specify the death penalty in your verdict. In the exercise of your discretion as to which punishment

[•Words enclosed in brackets erased in copy.]

shall be inflicted you are entirely free to act according to your own judgment.

190 P. C.

Given [as modified Refused]*

Fricke, Judge.

Burglary—Degrees

You are instructed that every burglary of an inhabited dwelling-house or building committed in the night-time, and every burglary, whether in the daytime or night-time, committed by a person armed with a deadly weapon, or who while in the commission of such burglary arms himself with a deadly weapon, or who while in the commission of such burglary assaults any person, is burglary of the first degree. All other kinds of burglary are of the second degree.

Sec. 460, Penal Code.

If you should find the defendant guilty of burglary, it will be your duty to determine the degree thereof, and to state such degree in your verdict.

Given [as modified Refused]*

Fricke, Judge.

[fol. 32] [File endorsement omitted.]

[fol. 33] IN SUPERIOR COURT OF LOS ANGELES COUNTY

DEFENDANT'S REQUESTED INSTRUCTIONS—Filed November 22, 1944

Defendant's Instruction No. —

You are instructed that the evidence in this case is circumstantial evidence. Where circumstantial evidence is relied upon the circumstances must not only be consistent with guilt but they must be inconsistent with any other rational hypothesis, and if from the evidence in this case there is a rational hypothesis of innocence you must acquit the defendant.

[Given as modified Refused]* Refused Covered.

Fricke, Judge.

[*Words enclosed in brackets erased in copy.]

Defendant's Instruction No. —

You are instructed that the evidence in this case is circumstantial evidence and that where the evidence is circumstantial evidence and there are two reasonable theories which you may adopt, one leading toward innocence and the other leading toward guilt, you must adopt that one leading toward innocence and reject that one leading toward guilt.

[Given as modified Refused]* Refused Covered.

Fricke, Judge.

[fol. 34] Defendant's Instruction No. —

You are instructed that where circumstantial evidence is relied upon as to any fact in the case and those circumstances are equally compatible with innocence or guilt, you must adopt those circumstances leading toward innocence and reject those circumstances leading toward guilt.

[Given as modified]* Refused Covered.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that the law is not vindictive. Its policy is to protect the innocent. It deems it better that many guilty should escape than that one innocent person should be convicted and suffer punishment for a crime which has not been committed. Therefore the law encourages jurors and requires them to give the defendant the benefit of every reasonable doubt and to acquit him if the jurors, as reasonable men and women, conscientiously can find a [fol. 35] reasonable doubt in the case.

[Given as modified]*

Refused Argumentative and instructions on fact as far as first two sentences are concerned. Reasonable doubt covered by instruction given.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that where expert testimony is relied upon by either side, it is your right to consider any interest which the expert may have in the case. You have the right to reject the testimony of such expert if you believe

[*Words enclosed in brackets erased in copy.]

that by reason of his interest in the case his testimony is unreliable.

[Given as modified]*

Refused Covered.

Fricke, Judge.

[fol. 36] Defendant's Instruction No. —

You are instructed that you cannot convict the defendant in this case upon the opinion testimony of experts but must determine this case from facts introduced in evidence, and if the facts introduced in this case, exclusive of the testimony of experts, are insufficient to establish the offenses [of burglary]* charged as to any count in the information, you must acquit the defendant of such count or counts.

[Given as modified]*

Refused Not the law. There is no such rule as that in arriving at a verdict the jury must disregard the testimony of experts.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that a reasonable doubt may arise from the unsatisfactory nature of the prosecution's evidence and if the evidence is of such character as to leave a reasonable doubt in your mind you must acquit the defendant, irrespective of whether the defendant took the stand or [fol. 37] offered any proof.

[Given as modified]*

Refused Covered—1096a P. C.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that it is not necessary for the defendant in any event to prove his innocence if the defendant has elected in this case to rest upon the weakness of the prosecution's case, and if you find after a consideration of the prosecution's case that there is a reasonable doubt in your minds as to the guilt of the defendant, you must acquit him.

[Given as modified]*

Refused Covered 1096b P. C.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that the defendant is presumed to be innocent until his guilt is clearly established by the evidence [fol. 38] beyond a reasonable doubt. All presumptions of law are in favor of the innocence of persons accused of the commission of crimes and every person so accused is presumed to be innocent until the contrary is shown and until his guilt is established by the preponderance of evidence in the trial of the case, and this presumption of innocence remains with the defendant at every stage of the trial unless and until the evidence convinces you to the contrary beyond all reasonable doubt.

[Given as modified]•

Refused Covered 1096a P. C.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that if you entertain a reasonable doubt as to the guilt of the defendant as to [any or all]• either of the counts in the information, you must give him the benefit of that doubt and acquit him; on such count or counts.

[Given as modified]•

Refused Covered—1096a P. C.

Fricke, Judge.

[fol. 39] Defendant's Instruction No. —

You are instructed that it is not sufficient to warrant the conviction of the defendant for the prosecution to awaken in your minds a suspicion that the defendant did any of the things alleged in the information. Neither is it sufficient for the prosecution to satisfy your minds that it is more probable that the defendant committed the offense or any of the offenses mentioned in the information than that he did not; before you are justified in finding him guilty the prosecution must go further and prove such facts against the defendant beyond a reasonable doubt.

[Given as modified]•

Refused Covered by general and reasonable doubt instructions.

Fricke, Judge.

[•Words enclosed in brackets erased in copy.]

Defendant's Instruction No. —

You are instructed that a reasonable doubt is that state of the case which, after a comparison and consideration of all the evidence, leaves your minds in that condition that you cannot say you feel an abiding conviction to a [fol. 40] certainty that the accused committed the offense.

[Given as modified]*

Refused Covered—1096a P. C.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that you cannot convict on mere suspicion, conjecture or guesswork, and if the evidence in this case leaves your minds in that state where you have to guess at the verdict or conjecture upon it or if it is based merely on suspicion, you must acquit the defendant.

[Given as modified]*

Refused Covered—1096a P. C.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that specific intent to commit larceny is an essential element of the crime of burglary and that whenever specific intent is an essential element of the offense, no presumption of law can arise as to the existence of such intent, for it is a fact to be proved, like any other fact in the case.

[Given as modified]*

Refused Covered by definition of burglary given.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that if weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory evidence was within the power of the people to produce, the evidence offered should be viewed with distrust.

[Given as modified]*

Refused Abstract—not supported by evidence.

Fricke, Judge.

[fol. 42] Defendant's Instruction No. —

You are instructed that mere suspicion is not sufficient to justify a conviction.

[Given as modified]*

Refused Covered.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that the burden of proof is upon the prosecution to prove each and every element of the crime of burglary beyond a reasonable doubt. Specific intent is an essential element of the crime of burglary and the burden of proof is upon the prosecution to prove specific intent beyond a reasonable doubt.

[Given as modified]*

Refused Covered.

Fricke, Judge.

[fol. 43] Defendant's Instruction No. —

You are instructed that before you can convict the defendant of the crime of burglary you must find that he actually entered the premises with intent then and there to commit larceny. Unless you find that the defendant did actually enter the premises and also that he did so with intent to commit larceny you must acquit the defendant. The burden of proof is upon the prosecution to prove such intent beyond a reasonable doubt; that burden never shifts, and remains upon the prosecution throughout the whole case and if you believe from the evidence [as to any count or counts]* that the defendant did not enter the premises involved or that he did not have the specific intent to commit larceny, or if there is a reasonable doubt as to such entry and intent in your minds, then you must acquit the defendant of burglary.

[Given as modified]*

Refused Covered.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that you cannot convict the defendant [fol. 44] of burglary unless you believe to a moral certainty

[*Words enclosed in brackets erased in copy.]

and beyond a reasonable doubt that the defendant entered the premises described in the information with the intent to commit grand or petty larceny.

[Given as modified]*

Refused Covered.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that you cannot convict the defendant on mere suspicion, conjecture, guesswork, or surmise.

[Given as modified]*

Refused Covered.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that a reasonable doubt may arise from the unsatisfactory nature of the prosecution's evidence and if the evidence is of such character as to leave a reasonable doubt in your mind you must acquit the defendant, [fol. 45] irrespective of whether the defendant took the stand or offered any proof.

[Given as modified]*

Refused Covered.

Fricke, Judge.

Defendant's Instruction No. —

If you believe beyond all reasonable doubt that the defendant was guilty of some crime necessarily included in the information, but have a reasonable doubt as to whether the crime was murder or manslaughter, you must give him the benefit of that reasonable doubt and acquit him of murder and find him guilty of manslaughter only.

[Given as modified]*

Refused Defdt. is either guilty of murder (P. v. Fountain 170 Cal. 460) or not guilty.

Fricke, Judge.

[fol. 46] Defendant's Instruction No. —

You are instructed that if you believe that the defendant killed the decedent as charged in the information and that the killing was not excusable or justifiable and believe all

[*Words enclosed in brackets erased in copy.]

this to be proved to a moral certainty and beyond a reasonable doubt, but entertain a reasonable doubt as to whether the killing was murder in the first degree as defined in the instructions; you must acquit the defendant of that grade of the offense and you can only find him guilty, if you find him guilty at all, of murder in the second degree or of manslaughter, which are offenses included in the charge contained in the information, for the jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged.

[Given as modified]•

Refused Killing was first degree as death by strangulation is a killing by torture and first degree murder P. v. Fountain, 170 Cal. 460—no reasonable inference but that killing was in perpetration of burglary P. v. Witt, 170 Cal. 104;

Fricke, Judge.

[fol. 47] Defendant's Instruction No. —

You are instructed that you are not bound to accept the opinion of any expert as conclusive but should give to it the credibility and weight to which you find it to be entitled. You also have a right to consider such evidence, together with your own inspection of the physical evidence and then form your own opinion, because you are the sole judges of the facts in this case.

[Given as modified]•

Refused Covered by statutory instruction—1127b. Penal Code.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that it is the policy of the law to zealously protect the innocent. In a criminal case the law clothes the defendant with a presumption of innocence and casts upon the people the burden of proving guilt beyond a reasonable doubt. The defendant is not obliged to prove his innocence or offer any proof thereon, and if the defendant elects not to take the witness stand but to rest upon what he believes to be the weakness or insufficiency of the [fol. 48] people's case, he has a right to so do and no infer-

[• Words enclosed in brackets erased in copy.]

ence or presumption of guilt arises from his failure to take the witness stand.

[Given as modified]*

Refused Covered.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that the fact that the prosecutor has a right to comment on the failure of the defendant to take the stand does not relieve the prosecution of the burden of establishing guilt beyond a reasonable doubt and by competent and legal evidence.

People v. Sawaya, 46 Cal. App. 2d, 466.

[Given as modified]*

Refused Covered.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that the right of the prosecution to [fol. 49] comment on the failure of the defendant to take the stand cannot be used to supply a failure of proof by the prosecution.

People v. Zoffel, 35 Cal. App. 2d, 215

[Given as modified]*

Refused.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that the burden of proof rests on the prosecution and the failure of the defendant to take the stand raises no presumption or inference of guilt.

People v. Zoffel, 35 Cal. App. 2d 215.

[Given as modified]*

Refused.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that if you find and are satisfied beyond a reasonable doubt that the defendant committed the [murder]*, homicide and that he was not in the act of [fol. 50] burglarizing the apartment, but that the [mur-

[*Words enclosed in brackets erased in copy.]

der]* homicide was committed upon a sudden quarrel or in the heat of passion, or in the commission of an unlawful act not amounting to a felony, then you cannot convict the defendant of anything greater than manslaughter.

[Given as modified]*

Refused Abstract—also under 1105 P. C. Burden was upon defd't. to show crime only amounted to manslaughter. Furthermore killing by strangulation, a fact here conclusively established makes the crime first degree murder so the law says death by torture is first degree murder. P v. Fountain, 170 Cal. 460.

Fricke, Judge.

Defendant's Instruction No. —

If you believe beyond a reasonable doubt that the defendant killed the deceased as charged in the information, and further believe that the killing was done while in the perpetration or attempt to perpetrate a felony, to-wit, burglary, and further believe that the killing was not manslaughter, nor justifiable, nor excusable, nor murder of the second [fol. 51] degree, but that it was murder of the first degree, it is within your discretion to determine whether he shall suffer death or confinement in the state prison for life. This discretion, however, should not be exercised by you arbitrarily, and its exercise should not be based upon passion or anything other than ~~than~~ a calm consideration of the evidence.

If, upon such consideration of the evidence, you doubt that the defendant should suffer the death penalty, then you should give him the benefit of that doubt and fix his punishment at imprisonment for life, provided, of course, you believe beyond all reasonable doubt that he is guilty of murder of the first degree.

[Given as modified]*

Refused Covered.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that if you find that the killing in this case did not take place during the commission or attempted commission of burglary, and that the killing was done with-

[*Words enclosed in brackets erased in copy.]

out malice on the part of the defendant, then you can find him guilty only of manslaughter, if you find him guilty of [fol. 52] any crime.

[Given as modified]*

Refused Not the law—a killing by strangulation is first degree murder. P. Fountain, 170 Cal. 460.

—, Judge.

Defendant's Instruction No. —

You are instructed that the finding of the defendant's fingerprints on the door to the garbage disposal compartment, alone and of itself, is insufficient to justify a verdict of murder.

[Given as modified]*

Refused Comment on fact which the court does not desire to make. Since the evidence conclusively shows the commission of murder and there is other evidence such an instruction tends to mislead the jury. We are not dealing with a case of only fingerprint evidence. Defense not entitled to an instruction as to every bit of evidence.

Fricke, Judge.

[fol. 53] Defendant's Instruction No. —

You are instructed that mere suspicion, no matter how strong that suspicion may be, is not sufficient to justify a conviction.

[Given as modified]*

Refused Covered.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that the finding of the defendant's fingerprints on the door to the garbage disposal compartment does not give rise to any inference that the defendant committed murder, or killed the deceased.

[Given as modified]*

Refused Fallacious—also a comment on a matter of fact which the law does not permit counsel to make (1127 P. C.).

Fricke, Judge.

[*Words enclosed in brackets erased in copy.]

[fol. 54] Defendant's Instruction No. —

You are instructed that all murder which is perpetrated by means of poison or lying in wait, or torture, or by any other kind of wilful, deliberate and premeditated killing, or which is committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary, or mayhem, is murder of the first degree; all other kinds of murder are of the second degree.

Manslaughter is the unlawful killing of a human being without malice. It is of two kinds, (1) voluntary—upon a sudden quarrel or heat of passion, and (2) involuntary—in the commission of an unlawful act not amounting to a felony; or in the commission of a lawful act which might produce death, in an unlawful manner or without due caution or circumspection.

You are instructed that before you can convict the defendant of murder in the first degree you must find and be satisfied beyond a reasonable doubt that the murder was committed in the perpetration or attempt to perpetrate burglary; unless you find and are satisfied beyond a reasonable doubt that the defendant unlawfully entered the apartment of the deceased with the intent to commit larceny, which is one of the elements of burglary, and that the defendant committed the murder while in the commission or attempt to commit such burglary, then you cannot find him [fol. 55] guilty of murder in the first degree, and your verdict, if you find that the defendant committed the homicide at all, would have to be murder in the second degree, or manslaughter.

[Given as modified] •

Refused Not the law—wholly ignores that a killing by torture is first degree murder by statute (P. C. 189) and this is a killing by torture (P v Fountain, 170 Cal. 460.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that the presumption of innocence goes with the defendant throughout the whole trial, even until the verdict is rendered, and this presumption of innocence outweighs and overbalances all suspicion and sup-

[*Words enclosed in brackets erased in copy.]

position and can only be destroyed by proof of guilt beyond a reasonable doubt.

[Given as modified]*

Refused Covered 1096a P. C.

Fricke, Judge.

[fol. 56] Defendant's Instruction No. —

You are instructed that the gravamen of the crime of burglary is the unlawful entry with intent to commit theft. If you find as to the burglary count in the information that the accused entered the premises and that the intent to commit theft did not occur until after the entry, you must find him not guilty of the crime of burglary, for then the crime would be theft and not burglary.

[Given as modified]*

Refused.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that the defendant is presumed to be innocent until his guilt is clearly established by the evidence beyond a reasonable doubt. All presumptions of law are in favor of the innocence of persons accused of the commission of crimes and every person so accused is presumed to be innocent until the contrary is shown and until his guilt is established by the preponderance of evidence in the trial of the case, and this presumption of innocence remains with [fol. 57] the defendant at every stage of the trial unless and until the evidence convinces you to the contrary beyond all reasonable doubt.

[Given as modified]*

Refused Covered.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that it is not necessary for the defendant in any event to prove his innocence if the defendant has elected in this case to rest upon the weakness of the prosecution's case, and if you find after a consideration of the prosecution's case that there is a reasonable doubt in

[*Words enclosed in brackets erased in copy.]

your minds as to the guilt of the defendant, you must acquit him.

[Given as modified] *

Refused Covered—1096a P. C.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that if weaker and less satisfactory [fol. 58] evidence is offered when it appears that stronger and more satisfactory evidence was within the power of the People to produce, the evidence offered should be viewed with distrust.

[Given as modified] *

Refused Abstract.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that you cannot convict upon mere suspicion, conjecture or guesswork, and if the evidence in this case leaves your minds in that state where you have to guess at the verdict or conjecture upon it, or if it is based merely upon suspicion, you must acquit the defendant.

[Given as modified] *

Refused Covered.

Fricke, Judge.

Defendant's Instruction No. —

You are instructed that in weighing the evidence of witnesses you have the right to consider their intelligence, their appearance on the witness stand, their apparent candor and fairness in giving their testimony, or the want of such candor and fairness, their interest, if any, in the result of the trial, their opportunities of seeing and knowing the matters concerning which they testify, the probable or improbable nature of the stories they tell, and from these things, together with all the facts and circumstances surrounding the case as disclosed by the testimony, to determine where the truth of the matter lies.

[Given as modified] *

Refused Covered.

Fricke, Judge.

[File endorsement omitted.]

[* Words enclosed in brackets erased in copy.]

[fol. 60] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

VERDICT—Filed November 22, 1944

We, the Jury in the above entitled action, find the Defendant guilty of Murder, a felony, as charged in Count #1 of the information and find it to be Murder of the First Degree.

This 22 day of November, 1944.

Iva B. Dickie, Foreman.

[File endorsement omitted.]

[fol. 61] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

VERDICT—Filed November 22, 1944

We, the Jury in the above entitled action, find the Defendant guilty of Burglary, a felony, as charged in Count #2 of the information and find it to be Burglary of the first degree.

This 23 day of November 1944.

Ivan B. Dickie, Foreman.

[File endorsement omitted.]

[fol. 62] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

MINUTE ENTRY—November 24, 1944

Deputy District Attorney S. Ernest Roll and the Defendant with his counsel, Milton B. Safier, present.

Defendant moves orally for a new trial.

The hearing on said motion for new trial and the pronouncing of judgment and sentence are continued to November 27, 1944 at 9:00 A. M.

[fol. 63] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

MOTION FOR A NEW TRIAL—Filed November 27, 1944

Comes now the defendant, Admiral Dewey Adamson, and moves for a new trial in the above-entitled case upon the following grounds:

I

The verdict is contrary to the law.

II

The verdict is contrary to the evidence.

III

The evidence is insufficient to sustain the verdict.

IV

The jury received evidence out of court other than that resulting from a view of the premises.

V

The jury separated without leave of Court after retiring to deliberate upon their verdict.

VI

The jury was guilty of misconduct by which a fair consideration of the case was prevented.

[fol. 64]

VII

The verdict was decided by lot.

VIII

The verdict was decided by means other than a fair expression of opinion on the part of all the jurors.

IX

The Court misdirected the jury in matters of law and erred in decisions of questions of law arising during the course of the trial.

X

The Deputy District Attorney prosecuting the case was guilty of prejudicial misconduct during the trial before the jury.

XI

The Court erred in denying defendant's motion for an advised verdict.

XII

New evidence has been discovered material to the defendant which he could not with reasonable diligence have discovered and produced at the trial.

XIII

The Court erred in instructing the jury.

XIV

The Court erred in refusing to give the jury instructions requested by the defendant.

[fol. 65]

XV

The defendant was denied due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Dated: November 24, 1944.

Morris Lavine and Milton B. Safier, Attorneys for Defendant.

(Endorsed) Received copy of the within Motion this 27 day of Nov., 1944. S. E. Roll, Attorney for P.

[File endorsement omitted.]

[fol. 66] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

MINUTE ENTRY—November 27, 1944

Deputy District Attorney S. Ernest Roll and the Defendant with his counsel, M. B. Safier, present.

Motion for a new trial is denied as to all counts of the information.

No legal cause appearing why judgment should not be pronounced, the Court pronounces judgment and sentence as to Counts 1, 2, 3, 4 and 5 of the information as follows: Defendant is sentenced to the State Prison for the term prescribed by law as to each count but on Count 1, defendant is to be put to death. Defendant is adjudged to be an habitual criminal.

Defendant is remanded into the custody of the Sheriff of the County of Los Angeles, to be by him delivered into the custody of the Warden of the State Prison of the State [fol. 67] of California at San Quentin.

Sentences as to Counts 3, 4 and 5 are ordered to run consecutively with each other and consecutively with sentence in Case No. 98859 and sentences on Counts 1 and 2 are ordered to run concurrently with each other; concurrently with sentences on Counts 3, 4 and 5 and also concurrently with sentence in case No. 98859. These sentences are entered in Judgment Book No. 57, Pages 121 and 122.

Count 1 of the information is automatically appealed.

[fol. 68] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

Present: Hon. Charles W. Fricke, Judge.

THE PEOPLE OF THE STATE OF CALIFORNIA

VS.

ADMIRAL DEWEY ADAMSON

JUDGMENT—November 27, 1944

Whereas the said Admiral Dewey Adamson having been duly found guilty in this Court of the crime of Murder, a felony, as charged in Count 1 of the information, which the Jury found to be Murder of the first degree without recommendation and Defendant having admitted prior convictions of felonies as alleged in the information, to-wit: Burglary and Larceny, a felony, convicted in the Circuit Court of the State of Missouri, Jackson County, upon which judgment was rendered on or about February 3, 1920 and

having admitted that he served a term of imprisonment therefor in the State Prison and Robbery, a felony, convicted in the Circuit Court of the State of Missouri, Jackson County, upon which judgment was rendered on or about June 30, 1927 and having admitted that he served a term of imprisonment therefor in the State Prison [fol. 69] The Court adjudges the Defendant to be an Habitual Criminal.

It is the judgment and sentence of this court for the crime of murder in the first degree, of which you, the said Admiral Dewey Adamson, have been convicted by the verdict of a jury, carrying with it the extreme penalty of the law, that you, the said Admiral Dewey Adamson, be delivered by the Sheriff of Los Angeles County, State of California, to the Warden of the State Prison of the State of California at San Quentin, to be by him executed and put to death by the administration of lethal gas, in the manner provided by the laws of the State of California, and the Sheriff is directed to deliver you, the said Admiral Dewey Adamson, to the said Warden of the State Prison at San Quentin within ten days from this date, to be held by said Warden pending the decision of this case on appeal.

Done in open Court this 27th day of November, 1944.

[fol. 70] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

Present: Hon. Charles W. Fricke, Judge.

THE PEOPLE OF THE STATE OF CALIFORNIA

VS.

ADMIRAL DEWEY ADAMSON

JUDGMENT—November 27, 1944

Whereas the said Admiral Dewey Adamson having been duly found guilty in this Court of the crime of Burglary, a felony, as charged in Count 2 of the information, which the Jury found to be Burglary of the first degree and Defendant having admitted prior convictions of felonies as alleged in the information, to-wit: Burglary and Larceny, a felony, convicted in the Circuit Court of the State of Mis-

souri, Jackson County, upon which judgment was rendered on or about February 3, 1920 and having admitted that he served a term of imprisonment therefor in the State Prison and Robbery, a felony, convicted in the Circuit Court of the State of Missouri, Jackson County, upon which judgment was rendered on or about June 30, 1927 and having admitted that he served a term of imprisonment therefor in the State Prison

[fol. 71] It Is Therefore Ordered, Adjudged and Decreed that the said Admiral Dewey Adamson is adjudged to be an Habitual Criminal and that he be punished by imprisonment in the State Prison for the term prescribed by law, which sentence is ordered to run Concurrently with sentences in Case No. 98734, Counts 1, 3, 4 and 5 and Concurrently with sentence in Case No. 98859.

It is further Ordered that the defendant be remanded to the custody of the Sheriff of the County of Los Angeles, to be by him delivered into the custody of the Warden of the State Prison of the State of California at San Quentin.

Done in open Court this 27th day of November, 1944.

[fol. 72] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

Department 43. Hon. Charles W. Fricke, Judge Presiding

No. 98734

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

v.

ADMIRAL DEWEY ADAMSON, Defendant

COMMITMENT DEATH SENTENCE—November 27, 1944

To the Sheriff of Los Angeles County, and to the Warden of the State Prison of the State of California at San Quentin:

Be It Remembered that on the 14th day of September, 1944, an information was filed against the defendant, Admiral Dewey Adamson, by the District Attorney, charging him with having, on the 24th day of July, 1944, murdered

Stella Blauvelt. That the defendant entered a plea of not guilty to the charge contained in the information, and that the cause came on for trial on the 14th day of November, 1944, before a jury. After hearing the evidence and instructions of the court, the jury retired and returned a verdict on the 22nd day of November, 1944, finding the defendant guilty of the crime of murder, as charged in the information, finding it to be murder of the first degree, and making no recommendation in their verdict as to the matter of penalty. That at the request of the defendant, further proceedings and the passing of judgment and sentence were continued [fol. 73] to and set for the 27th day of November, 1944, at the hour of 9:00 o'clock a. m. That on the 27th day of November, 1944, the defendant, by his counsel, moved for a new trial on all the grounds set forth in the Penal Code. That said motion for a new trial was on the 27th day of November, 1944, denied, whereupon the court pronounced judgment as follows:

"It is the judgment and sentence of this Court for the crime of murder in the first degree, of which you, the said Admiral Dewey Adamson, have been convicted by the verdict of a jury, carrying with it the extreme penalty of the law, that you, the said Admiral Dewey Adamson, be delivered by the Sheriff of Los Angeles County, State of California, to the Warden of the State Prison of the State of California at San Quentin, to be by him executed and put to death by the administration of lethal gas, in the manner provided by the laws of the State of California, and the Sheriff is directed to deliver you, the said Admiral Dewey Adamson, to the said Warden of the State Prison at San Quentin within ten days from this date, to be held by said Warden pending the decision of this case on appeal."

Now, Therefore, this is to command you, the Sheriff of said County of Los Angeles, as provided in said judgment, to take the said Admiral Dewey Adamson to the State Prison of the State of California at San Quentin and deliver him into the custody of the Warden of said State Prison; and this further is to command you, the said Warden of the [fol. 74] said State Prison of the State of California at San Quentin, to hold the said Admiral Dewey Adamson pending the decision of this cause on appeal, and upon the judgment herein becoming final to carry into effect the said judgment of said Court at a time and on a date to be here-

after fixed by order of this Court, within the said State Prison, at which time and place you shall then and there put to death the said Admiral Dewey Adamson by the administration of lethal gas.

In Testimony Whereof, I have hereunto set my hand as Judge of the Superior Court, and caused the seal of said court to be hereto affixed this 27 day of November, 1944.

Chas. W. Fricke, Judge of the Superior Court.

Attest: J. E. Moroney, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, by A. W. Moore, Deputy. (Seal.)

[fol. 75] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

NOTICE OF APPEAL

Comes now the defendant above named and gives written notice of appeal from the verdicts, judgments pronounced, and orders denying the motion for a new trial, to the Supreme Court of the State of California.

Dated: November 30, 1944.

Milton B. Safer, Morris Lavine, Attorneys for Defendant.

[fol. 76] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

REQUEST FOR PREPARATION OF RECORD ON APPEAL AND FOR INCLUSION OF ADDITIONAL MATTERS IN CLERK'S AND REPORTER'S TRANSCRIPTS: STATEMENT IN GENERAL OF GROUNDS OF APPEAL—Filed December 1, 1944

Comes now the defendant and appeals to the Supreme Court of the State of California from the verdicts rendered and judgments pronounced and from orders denying motion for new trial, which judgments were pronounced and orders entered on the 27th day of November, 1944, and requests that the clerk's and reporter's transcripts on appeal be

prepared and filed. Appellant states that upon said appeal it will be necessary that the record on appeal in addition to the normal record include the following:

I

That the clerk's transcript on appeal, in addition to the normal record, include the following:

1. All minutes of the court;
2. All minutes showing motion for an advised verdict;
- [fol. 77] 3. All minutes showing motion for a new trial and order denying same;
4. All instructions given and refused, requested both by the People and the defendant and all instructions modified by the Court and given to the jury.
5. All written pleadings.

II

That the reporter's transcript on appeal, in addition to the normal record, include the following:

1. All proceedings had on the motions for an advised verdict;
2. All proceedings had on motion for a new trial, and order denying same;
- 3. All motions, objections, arguments of counsel, and rulings of the Court during the trial of the case;
4. All instructions given to the jury and all instructions refused or modified.
5. All remarks and statements of the Court and of the District Attorney during the trial of the case.
6. All proceedings had at the bench or elsewhere out of hearing of the jury.
7. All proceedings had relative to appointment of fingerprint expert.

III

Defendant states that the foregoing additional record on appeal will be necessary in addition to the normal record [fol. 78] in order to support the following grounds for appeal;

1. The question of the guilt or innocence of the defendant and the degree of offence or offences, if any, or included offence or offences if any.

2. The insufficiency of the evidence to sustain or justify the verdicts;

3. Errors of the Court in sustaining and overruling objections to the admission of evidence.

4. Errors of the Court in denying defendant's motions for an advised verdict.

5. Errors of the Court in denying defendant's motion for new trial.

6. Errors of the Court in giving certain instructions to the jury.

7. Errors of the court in refusing defendant's requested instructions.

8. Misconduct of the Deputy District Attorney trying the case.

Dated: November, 30, 1944.

Milton B. Safier, Morris Lavine, Attorneys for Defendant.

Approved: Fricke, J.

[fol. 79] (Endorsed:) Received copy of the within — this 1st day of December, 1944. Fred N. Howser by James Gibbons, Attorney for Plaintiff.

[File endorsement omitted.]

[fol. 80] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 81-82] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

Department 43

Hon. CHARLES W. FRICKE, Judge

No. 98734

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

ADMIRAL DEWEY ADAMSON, Defendant

Reporter's Transcript

APPEARANCES:

For the People: S. Ernest Roll, Esq., Deputy District Attorney of Los Angeles County;

For the Defendant: Milton B. Safier, Esq.

[fol. 83] Tuesday, November 14, 1944; 11:40 o'clock A. M.

Upon the above date the defendant personally appeared in open court with his counsel, Milton B. Safier, Esq., The People being represented by S. Ernest Roll, Esq., Deputy District Attorney of Los Angeles County, whereupon the following proceedings were had and the following testimony was taken, to-wit:

The Court: Call this case of People vs. Adamson. The clerk may draw a jury.

(Selection of a jury was thereupon commenced and concluded at 10 o'clock a. m. on November 15, 1944.)

The Court: You may swear the jury.

(Jury sworn to try the cause.)

Mr. Roll: May I suggest one alternate, if your Honor please?

The Court: Yes. I think we will draw two alternates.

Mr. Roll: All right.

(Two alternates were thereupon impaneled and duly sworn in the case.)

The Court: In view of the nature of the case, the court will order a daily transcript. The clerk may read the information.

(Information read by the clerk.)

The Court: You may proceed, counsel.
[fol. 84] Mr. Roll: Call Mr. Maurer.

John W. Maurer, called as a witness on behalf of the People, was duly sworn and testified as follows:

* The Clerk: State your full name, please.

A. John W. Maurer.

Direct examination.

By Mr. Roll:

Q. Will you state your full name again, please, sir?

A. John W. Maurer.

Q. Mr. Maurer, what is your business or occupation?

A. I am Police Surveyor.

Q. How long have you been engaged in that work?

A. Fifteen years and over.

Q. You are the gentleman that goes out, at the request of various law-enforcement agencies, to make maps and diagrams of premises, and things of that kind and character?

A. Make surveys and transcribe the survey notes to maps.

Q. Did you have occasion in the case which is now pending here in court to make a diagram of certain premises located at 744 South Catalina Street in the city of Los Angeles?

A. That is right.

Mr. Roll: At this time, if the court please, I have two diagrams here, a large one, which I ask be marked People's [fol. 85] Exhibit 1 for identification, and the smaller one, People's Exhibit 2 for identification.

The Court: They may be so marked.

Mr. Roll: With the permission of the court, I would like to—if we could get some thumb tacks—to put them on the board here.

The Court: Yes.

(Diagrams put on the blackboard.)

Mr. Safier: I will stand back here so I can follow it.

By Mr. Roll:

Q. Now, Mr. Maurer, with reference to this address at 744 South Catalina Street, this diagram was made on the 31st day of October, 1944, is that right?

A. That is right.

Q. With reference to that address there, that is a four-story stucco or brick apartment building, is that not correct?

A. Yes, that is right.

Q. And the location of the diagram that is depicted on People's Exhibit 1 is located on what floor of that apartment?

A. Well, that drawing—the scale of that drawing is one inch equals 2 feet, and that shows the rear two apartments on the fourth floor at 744 South Catalina Street.

Q. And the apartment here at the bottom of the map is known as 410; is that right?

A. That is right.

[fol. 86] Q. And the apartment across the hall is known as 409; is that right?

A. That is right.

Q. Now, with reference to the dark lines, these black lines on the outside, that is the outside wall of the building, is that true?

A. That is right.

Q. With reference to the lines in here, the small lines, those indicate windows; is that correct?

A. That is right.

Q. Roughly, can you tell us the approximate size of this living room here?

A. Yes; it is 14 feet square.

Mr. Roll: Just put that in there, if you will.

(Witness does as requested.)

Q. Also put the distances in, on the inside, of the bathroom, hall, closet, kitchen and dinette there.

(Witness does as requested.)

Q. You have indicated the bathroom is 5 feet 3 inches across?

A. The bathroom is 5.3 feet across.

Q. The bathroom is 5.3 feet across?

A. East and west, and the kitchen is 7.7 feet wide, and, of course, 14 feet long.

Q. And the hallway?

A. The hallway between the kitchen and living room is 2.8 feet.

[fol. 87] Q. Now, without going into too much detail, with reference to this other apartment—

A. That is identical.

Q. That is identical in dimension?

A. Absolutely.

Q. Now, with reference to the door which is shown here of the premises, that enters the apartment, is this the door here indicated by this dark line?

A. That is right. I will indicate that by "D-3", if you wish.

Q. All right. With reference to the kitchen and dinette here, you have indicated over in this corner a stove; is that right?

A. That is right; in the northeast corner of the kitchen is a stove, a gas stove.

Q. What is located over on the other side?

A. Along the west wall of the kitchen, starting from the north partition, there is a garbage—there is a garbage compartment beneath the level of the sink, and above the sink level there is a refrigerator; then, moving in a southerly direction, you come to the drainboard.

[fol. 88] Q. That is down here?

A. Yes, and the sink proper. Then, there is a small kitchenette—there are small cabinets that divide the kitchen from the dinette.

Q. With reference to what you have between these two black areas, that is, 410 and D-4, will you explain what is this area here?

A. Yes. You ascend the stairs—those are the rear stairs to what we call a landing, which would be this rectangular area here; that would be called a landing, stair landing. Then, there is a hall leading to the west, that would be to the rear of the building, to a window that has an exit onto a fire escape which leads on down to the ground; to the west of this landing is a hall—main hall of the apartment build-

ing, and there are two doorways leading into separate apartments.

Q. Now, will you give us the approximate distance across the hall from D-4 to D-3?

A. It is 9 feet.

Q. And I notice going into the apartment which you have designated as 409 you have depicted here a divan?

A. That is right.

Q. It is one of these folding down beds that you pull out and goes back in the closet when it is not in use?

A. Yes. The same type of bed is depicted here in apartment 410, folded in the closet.

[fol. 89] Q. You have also depicted in 409, Mr. Maurer, a divan; is that correct?

A. Yes, a divan in the living room against the north wall, from the windows.

Q. That was the condition of apartment 410 on the day you were out there?

A. That is right.

Q. That is, the 31st of October?

A. Yes.

Q. Now, with reference to this fire escape; as you go down the fire escape what is there on the first floor or ground? Is there a ladder? Can you walk all the way down, or what?

A. That I don't know.

Q. Do you have any measurements there made from her apartment door to apartment 409 or 410, to the nearest door to the next apartment on towards the west?

A. Yes, I made that measurement. It is 31 feet from 409, going along the north side of the hall to apartment 407; 31 feet from door to door, the distance between the doors.

Q. When you say "407" irrespective of the number you took the first door there?

A. Yes.

Q. To get the distance from the first door to 409; is that correct?

[fol. 90] A. The first door west.

Q. It is on the same side as 410 is. Is that door just across the hall from the first one there?

A. That is right, they are the same distance from either 409 or 410 and directly opposite each other in the hall.

Q. Now, you have over here indicated a garbage compartment?

A. That is right.

Q. You have a "D-1" there. What does the "D-1" indicate?

A. That is a door in the landing or hallway itself leading into the garbage compartment from the outside of the apartment or from the hallway.

Mr. Roll: I see Dr. Webb is here. May we put him on and call Mr. Maurer back?

The Court: Yes, you may do so.

[fol. 91] FRANK R. WEBB, called as a witness on behalf of the people, was duly sworn and testified as follows:

The Clerk: State your name, please, Doctor.

A. Frank R. Webb.

Direct examination.

By Mr. Roll:

Q. Your name is Dr. Frank R. Webb?

A. Yes, sir.

Q. You are a physician and surgeon?

A. Yes, sir.

Q. Licensed to practice in the State of California?

A. Yes, sir.

Q. A graduate of a medical school?

A. A graduate of Columbia University, New York City.

Q. What year, Doctor?

A. 1902 from the College of Physicians and Surgeons.

Q. And you served an internship thereafter?

A. I did in Washington, D. C.

Q. After that what type of practice did you engage in?

A. Private practice until 1912 when I came west.

Q. All right, what happened when you came west?

A. I was surgeon for the Pacific Great Eastern in British Columbia until 1915; then after that I came to Los Angeles and was associate professor in the University of Southern California Medical College.

[fol. 92] Q. You have been connected with the County of Los Angeles in an official capacity for how long?

A. I have been associated with the Coroner's office since 1917.

Q. In what capacity, Doctor?

A. As Autopsy Surgeon.

Q. And you have performed several thousand autopsies; is that correct?

A. I have, at least thirty thousand.

Q. How many?

A. Over thirty thousand.

Q. Over thirty thousand. Now, directing your attention to one Stella Blauvelt, did you, Doctor, on the 26th day of July, 1944, perform an autopsy on one Stella Blauvelt?

A. I did.

Q. And do you have a photograph here which shows a fair representation of the person upon whom you performed this autopsy?

A. I have.

Q. May I see it, please (receiving photograph)?

The Court: Mark that 3 for identification.

Mr. Roll: Yes.

Q. This is a fair representation, Doctor?

A. It is.

Q. I am going to show you, Doctor, another picture here which I believe is a police photograph and I will ask it be [fol. 93] marked People's Exhibit 4 for identification.

The Court: 4 for identification.

By Mr. Roll:

Q. Is that a different view of the same individual upon whom you performed the autopsy?

A. It is a different view of the same individual and shows the neck region where the wire was tied three times around the neck.

Mr. Roll: At this time, if the court please, I will offer the two photographs, 3 and 4, into evidence.

The Court: So marked.

By Mr. Roll:

Q. Now, Doctor, will you explain to the court and to the ladies and gentlemen of the jury—I should say ladies and gentleman, what examination you made and also the conclusion you came to as to the cause of death?

A. My examination of Stella Blauvelt was made on the 26th day of July, 1944, at 11:48 a. m., and showed the party

to be a female of the white race, aged sixty-four years, height 4 feet 10½ inches, weight 126 pounds, blue eyes, gray hair and light complexion. Further examination showed that there was a slight contusion over the back of both hands. The left humerus was dislocated at the shoulder. There is extensive ecchymosis around the left eye, over the left side of the face extended upward into the left side front of the head and over the left ear. The skull is thick and is intact. The brain tissue is markedly [fol. 94] injected with some subpia hemorrhage. The larynx appears normal, and there is no signs of bruising. The lips are bruised and have a swollen appearance. The lungs are intensely congested and hemorrhagic in consistency and appearance. The heart is normal for her age. The liver of moderate size is pale drab, homogeneous in structural appearance on cut sections and fibrous in consistency. The gall bladder is filled with calculi; the spleen is fibrous and grayish in color. The kidneys are small, shrunken with granular surface and narrowed cortex. The uterus and ovaries, vagina and rectum are normal. The stomach mucosa is normal. There are three superficial bruised grooves, 3/8ths of an inch across, extending around the upper neck region. An electric extension cord was removed from around the neck. On the left side the groove is slightly excoriated; on the right side the neck was a reddened and bruised appearance. From these findings it was determined that the immediate cause of death was strangulation due to constriction around the neck. Other conditions contusion of the brain due to trauma to the head. [fol. 95] Q. Now, Doctor, with reference to what you say you found around her neck, what was that, please?

A. It appeared to be an electric cord, insulated wire.

Q. And the primary cause of death was strangulation?

A. Strangulation, yes, sir.

Q. Doctor, I believe you testified that you saw her on the 26th of July at what time, please?

A. I saw the body on the 26th day of July at 11:48 a. m.

Q. And, Doctor, could you express an opinion based on your experience as to how long, approximately, at that time Stella Blauvelt had been dead, in hours?

A. The body was in pretty fair condition and she had been dead possibly close to 48 hours.

Q. Now, you mentioned the term "ecchymosis." Will you state to the ladies and gentleman of the jury what you mean by ecchymosis?

The Court: Well, that is with reference to the region of the eye?

Mr. Roll: Yes, your Honor.

The Court: All right, Doctor.

A. I stated there is extensive ecchymosis around the left eye, over the left side of the face extending upward into the left side front of the head and over the left ear. By that I refer to a darkened area due to hemorrhage into the tissues of the skin, in other words, commonly spoken of as a bruise, [fol. 96] but really more extensive than the ordinary superficial bruise.

Q. And have you expressed any opinion as to how a bruise of that type or character might have been caused, Doctor?

A. It is very hard to state the method of causing a bruise like that which is extensive over that side. All that I can state is that either some object hit that head or the head hit some object, and that object was not a sharp or cutting object.

Mr. Safier: I didn't understand you.

A. The object was not a sharp or cutting object.

Mr. Safier: It was not.

A. It was not a cutting object. There was no cut on the skin.

By Mr. Roll:

Q. Doctor, you mentioned something about contusion of the hands, I believe.

A. On the back of the hands.

Q. Could you explain a little more in detail what you observed in reference to that?

A. I stated there that the contusion over the back of the hands,—by that I refer exclusively to the back of the hands and not to the knuckles,—it was over the back of the hands, both hands, that showed contusions.

Mr. Roll: You may cross examine.

[fol. 97] Cross-examination.

By Mr. Safier:

Q. Doctor, your autopsy was made on July 26th at 11:48 a. m.; is that correct?

A. Yes, sir.

Q. Where was that made, Doctor?

A. At the Los Angeles County morgue, Hall of Justice.

Q. And you made that autopsy yourself, did you, Doctor?

A. I did.

Q. Now, you read from a report that you have in your hand, Doctor. Is that a report made out by you or dictated by yourself?

A. That is a report dictated to my secretary at the time of the autopsy right at the operating table.

Q. Dictated by yourself, Doctor?

The Court: Do you use the custom, Doctor, of dictating as you are proceeding, step by step?

A. Yes, sir, step by step.

By Mr. Safier:

Q. Doctor, have you an independent recollection of this particular autopsy or is your testimony solely from the written report that you have in your hand?

A. The recollection that I have particularly was a cord, which was still around the neck, left in place for my observation.

Q. Was that cord around the neck the first time you saw the body, Doctor?

[fol. 98] A. Yes, sir.

Q. Was it removed by yourself?

A. No, I think it was removed by my assistant, Mr. Coad, who was working with me.

Q. At the time of the autopsy?

A. At the time, yes, sir.

Q. Would you mind telling me again, Doctor, what the height of this woman was?

A. Her height was 4 feet 10½ inches, weight 126 pounds.

Q. Doctor, you testified at the preliminary hearing in this case in the Municipal Court, did you not, on September 1, 1944?

A. I don't recall the exact date; I haven't a record of that here, but I did testify, yes, sir.

Q. Doctor, I will ask you to read your testimony on page 47, lines 8, 9 and 10.

(Witness does as requested.)

A. Yes, sir.

Q. Did you so testify?

A. I did.

The Court: Just a minute. Let us follow the regular procedure.

By Mr. Safier:

Q. I will ask you, Doctor, if this question was asked you and whether you gave this answer:

"Q. Will you give us the further results of your examination?

[fol. 99] "A. My examination showed the body to be a female of the white race, age sixty-four years, height 5 feet 10½ inches."

Mr. Safier: Now, the answer, your Honor, is very long, it goes on—

The Court: I appreciate that is the only point you want?

Mr. Safier: That is the only point.

The Court: It is not necessary, in proceeding by way of refreshment or impeachment, to read the entire answer if a part of it satisfies the examiner.

Mr. Safier: I want it understood it is only a part of the answer.

Q. Was that question asked and was that your answer?

A. I read my answer from my report here, which definitely states 4 feet 10½ inches. I do not see how I could have said 5 feet 10 inches, when it is written right here in front of me.

Q. I want to know whether this woman's height was 5 feet or 4 feet.

A. 4 feet, 10½ inches.

Q. Now, you testified, Doctor, that the woman had been dead, in your opinion, close to 48 hours?

A. Yes, sir.

Q. Could it have been longer than that?

A. Well, the indications wouldn't lead you to suspect longer, other than it might have been an hour longer or an [fol. 100] hour or two less. But I couldn't state right to the minute.

Q. It wouldn't vary within an hour or two either way?

A. I wouldn't think so.

Q. Now, I believe you testified, Doctor, there were some bruises on the hands?

A. On the back of the hands.

Q. On the back of the hands?

A. Yes.

Q. Was that on the back of both hands?

A. Yes, sir.

Q. Which part of the hand was it, Doctor?

A. Directly over the back of the hands; not over the knuckles, but over this area of the hand, the back of the hand.

Q. Not over the fingers—not over the back of the fingers?

A. No, sir.

Q. That appeared on both hands, I believe you said?

A. Slight contusions on the back of both hands.

Q. Did they appear to be—strike that.

Mr. Safer: That is all, Doctor. Thank you very much.

Mr. Roll: May the doctor be excused, your Honor?

The Court: Yes, the doctor may be excused.

(Witness excused.)

The Court: I think we will take our morning recess at this time. During this recess the jury keep in mind the [fol. 101] admonition not to talk about the case or form or express any opinion. During the conduct of the trial the alternates are a part of the jury and go to the jury room with the jury. But after the jury retires for its deliberation, only the original twelve, or who happen to constitute the original twelve, go to the jury room.

(Recess.)

(The following proceedings were had in the absence of the jury:)

Mr. Roll: If the court please, I would like to make a motion at this time, your Honor, in reference to some testimony which will be introduced in this case. Your Honor knows when we tried the other case against this defendant

it involved fingerprint testimony and Mr. Larbaig was called as an expert in that case, and counsel, in commenting to the jury in that case, mentioned the fact that fingerprint experts were expensive. I would like to state Mr. Larbaig will testify in this case, and I would like to make the motion that the court appoint an additional expert to make an examination of the negatives in this case, which will be turned over by Mr. Larbaig to any experts your Honor should appoint, the negatives of the various prints which were taken at 744 South Catalina Street, and also the negative of the enlargement of the rolled print of this defendant.

The Court: Have you any person to suggest, Mr. Safier? [fol. 102] Mr. Safier: No, I haven't, offhand, your Honor. I might make some inquiry during the noon hour.

The Court: We are rather limited on the question of fingerprint men. Those closely available are connected with law-enforcement agencies.

Mr. Roll: The remainder of them are in the Armed Services.

Mr. Safier: Yes, I have a suggestion, your Honor, on second thought. Capt. Allen—I believe he is retired now, but he used to be at one time with the Bureau of Investigation in the Sheriff's office. As a matter of fact, I talked to him and asked if he had an opportunity to look at these prints. Of course, his time has been rather limited.

The Court: Well, I am a member of the Fingerprint Association, and I do not know just—Is there someone here who knows anything about Capt. Allen's experience? Do you know anything about Capt. Allen's experience?

Mr. Billings: I do, your Honor.

Mr. Roll: Mr. Billings—

Mr. Billings: Capt. Allen worked in the Department along about 1922 or 1923.

The Court: You have reference to Chester Allen now?

Mr. Billings: Yes, Chester Allen.

The Court: He has since retired from the Sheriff's Department. He has been a captain for the last nineteen or [fol. 103] twenty years. He hasn't had the experience in fingerprint work that an expert should have. I recognize him now. I know Chet Allen very well. I would hardly want to take a man who has been out of the work as long as that, if we could get somebody who is more up to date on the matter.

Mr. Roll: I am willing to take—

The Court: I do not hesitate to make the statement the advance in fingerprint technique has changed very radically. As a matter of fact, I just found out something the other day with reference to black fingerprint powder that is being used, that was new to me.

Mr. Roll: I appreciate the situation. We are limited if your Honor please, in whom we can select. They do have several fingerprint men in the Sheriff's office. I would prefer having one, if possible, who has not made any examination of the prints.

The Court: I think, unquestionably, we should utilize somebody who has never seen these prints at all.

Mr. Roll: That was my thought.

The Court: Merely submit the questioned prints to him and the fingerprint card to him and then let him form his conclusions and let the chips fall where they may. I think that is the only fair way of doing it.

Mr. Roll: Mr. Billings has—I don't know whether counsel was here in court—has rolled the prints of the defendant [fol. 104] and made a comparison of those prints between the—on the priors, the question of the priors.

The Court: I don't think we should use Mr. Billings, to be very frank with you.

Mr. Roll: I wanted to call your Honor's attention to that situation.

Mr. Safier: I think it should be somebody foreign to the Sheriff's office.

The Court: The Sheriff's office is not connected with this case in any way, as far as I know. This is a police case.

Mr. Safier: Except it is a law-enforcement body.

The Court: I am not going to get any amateur fingerprint man here.

Mr. Safier: No, I do not think it should be an amateur, but I think it should be somebody independent of the prosecution and independent of the defendant.

The Court: If you have anybody who comes anywhere near the qualifications, I will be glad to appoint him. It does not make any difference to me who is appointed.

Mr. Safier: Well, I suggest your Honor wait until this afternoon, and I will make some inquiries.

The Court: All right. Suppose, when we take our recess, we come back here a little bit earlier, come back here at twenty minutes to 2 instead of a quarter to 2, and we will take the matter up at that time.

[fol. 105] Mr. Roll: I might suggest, if your Honor please, in so far as the Sheriff's office is concerned, I understand that Mr. Rogers is head of the Fingerprint Department down there. Is that correct?

Mr. Billings: It is.

Mr. Roll: Harry Rogers. I think he is probably qualified.

The Court: He is qualified. The men that I am intimately acquainted with are not men who are at all closely available. A number of them have gone out, some in the Armed Forces and some of them are tied up with occupations that make it impossible for them to take the matter over. We will leave it until that time and see if Mr. Safier has any suggestion to make. I think the value of the testimony, whichever way it breaks, is definitely increased by getting a person who has not had any connection with the case.

Mr. Roll: That was my thought, your Honor.

The Court: I will say, very frankly, I do not think it makes any difference, because this is not one of these opinion sciences. It is a question of whether he is familiar with the work or not. I think the results upon the same product, of any two men who are fingerprint experts, of necessity must be the same.

Mr. Roll: We will have Mr. Larbaig come back at about twenty minutes to 2 and turn the negatives over.

[fol. 106] The Court: Yes. Can you get those negatives for us, Mr. Larbaig?

Mr. Larbaig: Yes, sir.

Mr. Roll: Then, you come back at twenty minutes to 2. I would like to call Dr. Webb back.

The Court: Yes. The record will show the jury, counsel and defendant present.

Frank R. Webb, recalled:

Direct examination (resumed).

By Mr. Roll:

Q. Dr. Webb, in testimony this morning you referred to the light cord and one of the photographs depicted that light cord. During the recess did you go downstairs and bring up the light cord that you found around the neck?

[fol. 107] A. I did.

Q. Is that the light cord there, Doctor (handing light cord to the witness)?

A. I called it an electric cord. It could be for a radio or for a light, but that is the cord that was around the neck.

Q. And that is the cord which is depicted in the photograph which has been introduced here into evidence?

A. It is.

Mr. Roll: I now offer that cord, if the court please, into evidence as People's exhibit next in order.

The Court: I will mark it for identification at the present time. 5 for identification.

Mr. Roll: You may cross-examine.

Cross-examination.

By Mr. Safier:

Q. Dr. Webb, in making that examination of the deceased did you make an examination of the vagina to determine whether or not there was any evidence of criminal attack?

A. We did make that examination and found no abnormality or evidence of spermatozoa from attack.

Mr. Safier: That is all.

The Court: The doctor may be excused.

Mr. Roll: At this time, if the court please, with the court's permission, I would like to have the jurors view the two pictures which Dr. Webb has identified, to supplement his testimony.

The Court: Yes.

(Photographs handed to the jurors and examined by them.)

Mr. Roll: Thank you, Doctor.

John W. Maurer, recalled:

Direct examination (resumed).

By Mr. Roll:

Q. Mr. Maurer, with reference to—we were discussing this garbage compartment here on People's Exhibit No. 1, and this "D-1" indicating a small door which is hinged over on this side; is that correct?

A. That is right.

Q. And that leads right out into the hallway; is that true?

A. Yes, from the hallway into the garbage compartment.

Q. And in so far as the area that you have indicated as "D-2" is concerned, right here, at the time you were out there on the 31st of October, 1944, at that time there was no actual door there; is that correct?

A. No, the door was not there, but the hinges, part of the hinges, were attached to the compartment.

Q. Now, with reference to People's Exhibit 2, will you explain to the court and ladies and gentleman of the jury what that is and how that ties in with People's Exhibit [fol. 109] No. 1?

A. Yes. This is a—this drawing over here is a detailed drawing of the garbage compartment in the kitchen of apartment No. 410 at 744 South Catalina Street. The scale of this drawing is larger than in the drawing of Exhibit 1, in that it is a scale of one inch equals 6 inches. It is quite a larger scale than in the other drawing. Now, there are three views on this drawing as indicated in Exhibit No. 2, the first drawing. View 1, I shall call it, is a planned view of the garbage compartment in the kitchen of Apartment 410. Now, a planned view is a view whereby the eye is directly above the objects or the compartment as you are looking down, right down, therefore this "D-1" in View 1 is the same as the door in "D-1" in the Exhibit No. 1, showing it swinging out into the public hall of the apartment building. Now, "D-2" is the door indicated by "D-2" in the garbage compartment in Exhibit 1. Now, this also shows part of the drainboard leading to the sink here, looking down. Now, the actual dimensions, the inside dimensions of that garbage compartment are 2 feet 3 inches along the north and south and is 1 foot 9 inches wide or east and west. That is the dimension. Now, the dimension of this door, the width of the door "D-1" is 1 foot 2 inches, the width of it, the opening. The width or opening of "D-2" is 1 foot 7 inches. The doors swing as indicated on View 1 in Exhibit No. 2. Now, [fol. 110] view No. 2 is the front elevation of the garbage compartment. In other words, if we were standing in front of the stove in the kitchen of apartment 410 and looking forward or at the garbage compartment, you would have a view something like the view here as No. 2, showing the elevation or the heights. Now, we have this

opening in the white space here as the opening in "D-2," and the height of the door is 2 feet 6 inches. It also is 1 and 7 inches wide.

Q. Wait a minute. When you say the height of the door, do you mean the height of the door or the height of the opening?

A. The height of the opening in which—which the door goes into, yes.

Q. Go ahead.

A. Now, there is a shelf, horizontal shelf, naturally, in this compartment, and that shelf is 1 foot $3\frac{1}{2}$ inches above the floor level. This shaded portion here on the right indicates the partition, the main partition from the kitchen out into the landing or hallway of the apartment building.

The Court: For the record, that is the gray shaded portion?

A. Yes, this cross section area. In other words, in view 3, it is called the hall elevation. Standing in the hall looking at the wall, you would see the opening in the wall [fol. 111] on the outside of the apartment or in the hallway or landing. This shaded portion here indicates the wall on the outside of the apartment.

The Court: You are now referring to the yellow shaded portion?

A. Yes. And white rectangular section here indicates the opening corresponding to "D-1" on Exhibit No. 1. Now, the width of that door is 1 foot 2 inches, the same as in view No. 1. The height of the door is 2 foot 6 inches, and also shows this same shelf, under view of the shelf, looking out into the hall, the same elevation as in view No. 1, of 1 foot $3\frac{1}{2}$ inches high above the floor level. The dotted cross sectional part here indicates this partition here running back, the garbage compartment separating the kitchen of 410 and the adjacent apartment to the west.

The Court: There is one question that occurs to me, Mr. Maurer, and that is, you refer to the shelf there. Now, is the garbage compartment area both above and below the shelf, or only the area below the shelf?

A. This whole compartment is—this cross section dotted line here—the top of the entire garbage compartment extends up to this line, which is about the same level as the drainboard of the sink. It is a matter of 3 or 4 inches above

the height of the doors. It is just like a box, a rectangular box, being divided upper and lower, by this shelf, as I have [fol. 112] indicated here.

The Court: The upright height, vertical height of the opening is the sum of the height of the lower compartment plus the height of the other compartment?

A. Yes, sir, this distance above to the dotted line.

The Court: I am referring to the size of the opening.

A. The opening on both "D-1" and "D-2" are the same, being 2 feet 6 inches.

The Court: I see.

[fol. 113] A. And the width of the opening into the kitchen or D-2, is 1-foot 7 inches. The opening of D-1 out into the hallway is 1-foot 2 inches. Incidentally, this shelf is loose on the south edge of it; that is, one can lift the shelf up from the stringer that it rests on.

By Mr. Roll:

Q. What do you mean "stringer"?

A. Well, it is just a small board across there that you nail the shelf to.

Q. Now, in so far as this opening is concerned, this merely indicates the space where the door is; this indicates the space where the door is; is that right?

A. That is right.

Q. The area on the inside is depicted by these lines, outside lines right here?

A. You have the actual inside area and dimensions.

Q. Going back to People's Exhibit 1, you indicated here stairs down; and you pointed this way. In other words, here is the fourth floor coming from the third, and this is the top of your stairs?

A. That is the landing here.

Q. If you want to go down, you go down here?

A. Seventeen stairs down.

Q. Now, while you were out there, Mr. Maurer—it is not depicted on that diagram—but did you make some measurement concerning some light sockets in 410, particularly the living room?

[fol. 114] A. I did.

Q. Can you locate those, from your memory?

A. Approximately, as I recall it, it is approximately on the west wall of the living room and between the south wall to the hallway, as indicated here.

Q. Do you recall whether there is one there on the opposite side somewhere?

A. There is also one over on the east wall of the living room, just about in between the two windows, as indicated.

The Court: There is just a little question in my mind. Do you mean for light sockets? In other words, are there plugs in the baseboard where you can plug in a light, or just a place to plug in?

A. They are in the wall.

The Court: They are not the kind of sockets that you screw a light bulb into?

A. No, you plug in.

Mr. Hall: You may cross examine.

Cross-examination.

By Mr. Safier:

Q. You first went to the premises at 744 South Catalina Street on October 31, 1944; is that correct?

A. That is right.

Q. That was the first time you had been on those premises?

A. That is right.

[fol. 115] Q. Now, is that a brick building?

A. It is—yes, I think it is. It is a class-A building.

Q. Is it on a corner or in the middle of the block?

A. It is in the—between blocks, yes, between streets.

Q. That would be on the east or west side of Catalina?

A. It would be on the east side of the street, facing west.

Q. Between what streets?

A. Between Eighth—Seventh and Eighth, I believe. I imagine it would be approximately 100 feet from—north of Eighth Street.

Q. Between Seventh and Eighth, you said?

A. Yes, I think so. I know it is about 100 feet north of Eighth Street.

Q. Is there also an elevator in the building?

A. There is, an automatic-elevator.

Q. Now, the outer walls indicated by the heavy black lines, in the large drawing, are brick—are they brick walls?

A. They are—I think they are. I think it is a brick building.

The Court: At any rate, they are the extreme outside walls of the building?

A. That is right. They are quite a bit thicker than the inside partitions.

[fol. 115]. By Mr. Safier:

Q. This side of the drawing, where the fire escape appears, is the east side of the building, is it not?

A. That is the rear; that is the rear of the building; on the east side, yes.

Q. That would be the east side?

A. Yes.

Q. Now, are these the only two apartments of that building of which you made drawings?

A. That is the only two I was in, yes.

Q. What time of day was it you went out there?

A. In the morning, before noon; about 10:30.

Q. Referring to apartment 410, were people living in there when you were there?

A. 410? Yes, it was occupied.

Q. It was occupied?

A. Yes.

Q. Was 409 occupied?

A. I didn't see anyone there. I understood it was.

Q. It appeared to be occupied?

A. Yes.

Q. 409 also appeared to be occupied?

A. Yes.

Q. Now, how many light sockets did you indicate, just two?

A. Yes, that is the only two I saw. I have the exact location in my initial survey, but that is approximately the [fol. 117] location of them, being 7 or 8 or 10 inches above the floor.

Q. They are along the baseboard, aren't they?

A. They are above the baseboard, I think.

Q. Above the baseboard?

A. Yes.

Q. They are sockets which you plug into?

A. That is right.

Q. Now, there is no bedroom in either apartment 409 or 410, is there?

A. Bedroom?

Q. Bedroom.

A. No, it is a living room where the bed pulls out from the—pulls out from the closet and you let it down, as indicated in apartment 409 there.

Q. Now, referring to the garbage compartment, is it directly under the refrigerator, as it appears on that view 2?

A. Yes. The dividing line is indicated there in view 2. It is an inch or so below the level of the drainboard, and above is the refrigerator, and below is what I call the garbage compartment.

Q. What does this line above the white portion indicate?

A. That indicates the ceiling of the garbage compartment.

The Court: I do not know whether the record shows the line you are indicating. Counsel is pointing to the middle elevation on Exhibit 2, the dotted line slightly below the level of the drainboard. Just for the record, that is all.

[fol. 118] Mr. Safier: Yes.

Q. Now, Mr. Maurer, the yellow portion between the line I have just indicated and the top line, or the white section of view 2 is solid, is it not, that is, it is not open from the inside, it is a solid wall, isn't it?

A. Yes, yes. The shaded part there as you look at it, that is all solid.

Q. And view 2 is the opening of the garbage disposal section into the kitchen?

A. That is right.

Q. And view 3 is the opening of the garbage disposal section into the hall?

A. That is right.

Q. Now, you have indicated that the door to the garbage disposal section leading into the hall is hinged on the—

A. East end.

Q. (Continuing)—east end?

A. That is right, it is.

Q. And the door to the garbage compartment on the inside of the kitchen is hinged on the north end?

A. That is right.

Q. Is that correct?

A. That is right.

Q. Now, were both doors on there at the time you went out to this place on October 31st?

A. No, "D-1" was there; "D-2" had been removed. [fol. 119] However, the hinges as I have indicated in view 2 and view 3 or, rather, view 2, were quite evident.

Q. I see. Now, you indicated that there is a shelf in the garbage compartment?

A. That is right.

Q. I believe you testified it rested on a stringer?

A. A cleat, yes, sir.

Q. On one side?

A. Well, it rested on the cleats on both sides, that is the north end of the compartment and the south end. The south, it was loose from the south cleat, I could raise it up.

Q. Well, I am not sure that I understand exactly what you mean by a cleat.

A. Well, that is a cleat here.

Q. Will you explain just what a cleat is, so we will all understand it?

A. Well, here is the wall, two walls, and you want to put a shelf across there. Well, you can't, it is not good practice, or they don't rather, nail this shelf into the wall itself. They will take a piece of lumber, probably a 1-inch by 2-inch cleat and nail it to the wall and to this cleat they will nail the shelf.

Q. I see.

A. And here on the south of the compartment, south of the garbage compartment, that was loose. In other words, I could raise this up.

[fol. 120] Q. How was it on the other side?

A. It apparently was fastened so I could not raise it up.

Q. You could not raise it up?

A. No, sir.

The Court: By the way, did you make any examination so you could tell us whether or not there were any indications of nail holes on the south end of that shelf?

A. No, sir, I didn't notice that.

The Court: I see.

By Mr. Safier:

Q. Now, when you say you could raise it up, how far could you raise that shelf due to the fact it was fastened on the other side?

A. Well, I could raise it up a couple of inches.

Q. A couple of inches?

A. Yes, sir.

Q. Now, this garbage compartment is—"D-1" and "D-2" is sort of an L-shape, isn't it?

A. Well, right here it is in view No. 1, it gives you a large view of it looking down. You would have this offset in here from the door here to this partition here. That would be an L, a matter of 6 or 8 inches.

The Court: I think it is a rather exaggerated L, isn't it?

A. Sir?

The Court: I think it is rather an exaggerated L.

A. Yes, it is a—

[fol. 121] The Court: I think the shape indicated by the diagram is not what we call an L-shape. An L-shape would be very much misleading in the record.

By Mr. Safier:

Q. Now, does the shelf extend all the way to the door indicated by "D-1" and all the way to the door indicated by "D-2"?

A. It does to "D-2," that is the inside.

Q. Yes.

A. On view 1 I think it would be—it would end with a prolongation on the inside of the—

Q. Wall?

A. Wall. I think, and I am sure that on "D-2" it ends over at the inside of the compartment.

Q. Now, the space below the shelf, that is 1 foot 3½ inches?

A. That is right.

Q. And the shelf—

A. From the floor to the shelf, yes.

Q. And the space above the shelf 2½ feet to the top of the opening?

A. Yes, from the floor up. To find this you would subtract 1 foot 3 inches from 2 feet 6 inches and you would get this dimension here.

Q. Now, can you tell me the width of the shelf, the height of the shelf, or dimensions of the shelf?

A. That is approximately one inch.

[fol. 122] One inch?

A. A plain inch board.

Q. Now, you have indicated, referring to "D-2," that the door did not come—is not fastened at the wall but that there was some space on the wall to the hinge of the door; is that correct?

A. Yes, a matter of about 2 or 3 inches.

Q. That space is about 2 or 3 inches, you say?

A. That is right.

Q. You have also indicated the same space on "D-2" from the point where the door meets the wall to the end of the apartment?

A. That is right.

Q. What is the measurement of that space?

A. It is about the same, 3 inches—I will get the exact scale in a minute. Well, this distance of which you speak here to the north of "D-2" is $3\frac{1}{2}$ inches and the distance to the south is $4\frac{1}{2}$ inches. That is outside measurements.

Q. I see. Do you have the actual measurement of the door space itself?

A. Well, that is 1 foot 7 inches, approximately.

Q. And the part indicated by "D-1" is 1 foot 2 inches?

A. That is right.

Q. That is the actual opening?

A. That is right.

[fol. 123] Q. Now, referring to the door at "D-1": how far out does that door open? How far does it swing?

A. This door?

Q. "D-1."

A. "D-1." Well, "D-1" will swing out at right angles, if necessary, to the wall.

Q. How far will "D-2" swing?

The Court: There wasn't any door there when he looked at it, so it would be pure speculation.

A. There wasn't any door there and there is no obstruction there.

By Mr. Safier:

Q. Now, there were some refrigerator pipes in this garbage compartment, any plumbing or piping in that compartment?

A. I do not recall any. There might have been in the upper, above the shelf. I was mainly interested in the

part below the shelf there. There might have been some in the upper portion here.

Q. Could there have been some plumbing in the lower portion, too?

A. I don't think so.

Q. You are not positive?

A. I do not recall seeing any.

Q. But there might have been some, Mr. Maure?

A. Well, as I say, I do not recall seeing any. I looked in there pretty thoroughly. However, I did not have a [fol. 124] light in there. There might have been some over here along a dark corner that I could not see, but I do not recall seeing any.

Q. But there were some that you do recall in the upper section?

A. No, I did not say that. I did not see any at all. There could have been some in the upper section. I did not give that as close a scrutiny as I did the lower half. There could have been some, as I say, over in this dark corner here that I did not observe.

Q. Now, is the garbage compartment right up flush to the drainboard, right up nearer to the sink?

A. Yes, it is just annexed. There is no gap between the drainboard and the garbage compartment; it adjoins right up against it.

Q. Of course, this living room was furnished, was it not? There was some furniture in there when you were out there?

A. Yes, sir, that is right.

Q. Now, have you the dimensions of the hall from the kitchen to the living room?

A. It is right there. The apartment is 6 feet from outside wall to outside wall.

[fol. 125] Q. Tell me how far it is from the sink portion of the kitchen to the entrance to the living room.

A. 12 feet.

Q. Now, Mr. Maurer, how far is it from the point indicated by D-1 on this large drawing to the next apartment going down the hall in a westerly direction?

A. Well, I will make some calculations here. It is approximately 13 feet from—I will take it center to center—it is approximately $14\frac{1}{2}$ feet from the center of D-1 to D-3, or the door of 410. $14\frac{1}{2}$ feet, and it is 31 feet

from 410 to the next door to the apartment to the west. So I will subtract that. $16\frac{1}{2}$ feet from D-1 to the next door west.

Q. I see. Now, this portion indicated by white, that I am now indicating, which is west of the kitchen of apartment 410, that is one of the rooms of the next apartment, is that right?

A. Yes.

Q. Do you know which room it is?

A. Yes, it is 408. It is directly opposite to 407.

Mr. Safier: I think that is all.

The Court: Anything further from Mr. Maurer?

Mr. Roll: While he is here and has his good measuring instruments, there is an exhibit which I intend to introduce later on—he might give us the outside measurements of that door, if the court please.

[fol. 126] The Court: All right. We will go back to the direct examination for that purpose, however.

Mr. Roll: Yes, your Honor. To identify it for the record, I will offer it as—

The Court: Mark it 6 for identification.

Direct examination (resumed).

By Mr. Roll:

Q. Mr. Maurer, I will ask you to give us the measurements of that door, if you will, please?

A. Do you want with the flange?

Q. Take the inside measurements and then with the flange.

A. 1-foot $7\frac{1}{2}$ inches—the width of it is 1-foot, $7\frac{3}{4}$ inches.

Q. Now, the width with the flange, if you will give us that, please?

A. The over-all width is 1-foot, $8\frac{3}{4}$ inches.

Mr. Roll: May the record show he has marked those on there, too?

The Court: Yes.

The Witness: Now, the height of the door is 2-feet 6 inches.

By Mr. Roll:

Q. Will you give us the height of the door with the flange?

A. With the flange—the flange is $\frac{1}{4}$ -inch. So that would make it 2 feet, $6\frac{1}{4}$ inches.

[fol. 127] Mr. Roll: No further questions. Do you have any questions, counsel?

Mr. Safier: No, I have no further questions.

The Court: Mr. Maurer may be excused.

(Witness excused.)

Mr. Roll: Does your Honor desire to call a new witness or take the noon recess?

The Court: I don't think we would gain very much by barely starting and then picking up all the loose ends when we come back. We will take our recess at this time until 1:45. The jury keep in mind the admonition not to talk about the case or form or express any opinion.

(Whereupon a recess was taken until 1:45 o'clock p. m. of the same day, Wednesday, November 15, 1944.)

[fol. 128] Wednesday, November 15, 1944; 1:40 o'clock P. M.

(The following proceedings were had in the absence of the jury:)

The Court: Take up this preliminary matter in the Adamson case. What have you found out in the interim?

Mr. Safier: During the noon hour, your Honor, I telephoned the office and spoke with Mr. Lavine and I asked him concerning a fingerprint expert. He said he would endeavor to suggest somebody, make some inquiries during the noon hour. I telephoned him a little later during the noon hour and he said he had not heard yet; he was making some inquiries but had not got a report back yet as to who was available. So I have no one to suggest at this time. He did say, however, that we had the rest of the afternoon, and perhaps by tomorrow morning we would be able to suggest somebody. At this time I have no one to suggest. It is rather difficult to locate one.

The Court: Well, I am not at all surprised.

Mr. Roll: If the court please, this is the situation: I do not think this case will take terrifically a long time to

try, and I think they should have the benefit of having the prints to make a study of them as soon as possible.

The Court: I haven't the slightest idea as to where you would get any fingerprint experts outside of the sheriff's office, the District Attorney's office or the Police Department. [fol. 129] ment.

(Discussion off the record.)

The Court: I will tell you what I will do. We will just let the matter ride until the afternoon recess, and if there is not any other suggestion I will do the best I can to try and find somebody that does know the situation. It is not because of the difficulty of identifying fingerprints. I think a person who has had just a very short experience in fingerprint identification could come up here and make the identification. But I think when we put a man on the witness stand especially where the charge is murder, it should be somebody who has had years of experience.

Mr. Safier: Of course, Chester Allen did have a good many years' experience.

The Court: Well, now, if you had said "Chester Allen" when you started, I would have immediately recognized him.

Mr. Safier: I did not remember his first name offhand.

The Court: But his work was largely photographic work in the Department. At that time the fingerprint work in the Sheriff's office was entirely different than it is today. There are many things we have learned in the interim. Things that were considered absolutely impossible those days are perfectly possible now.

Mr. Safier: However, I think, your Honor, that he did some work in comparison. I think he has qualified himself as an expert.

[fol. 130] The Court: That is true. So have I in some matter of the business. But I will be perfectly frank, if I wanted to decide the question of whether two fingerprints were alike, I might look at them and come to a conclusion, but before I acted on it I would have somebody who had some more practical experience look at them. Of course, our California rule as to who is an expert, I think, is wholly unsatisfactory. An expert is a man who knows something more about a subject than a layman.

(The following proceedings were had in the presence of the jury:)

The Court: In the case on trial the record will show the jury, counsel and defendant present. You may proceed.

Mr. Roll: Mrs. Watts.

Mrs. MAUD B. WATTS, called as a witness on behalf of the people, was duly sworn and testified as follows:

The Clerk: What is your name, please?

A. Mrs. Maud B. Watts.

Direct examination.

By Mr. Roll:

Q. Your name is Maud B. Watts?

A. Yes.

Q. Where do you live, Mrs. Watts?

A. 1801 Bentley Avenue, West Los Angeles.

Q. I take it your occupation is that of a housewife?
[fol. 131] A. Yes.

Q. Is there a Mr. Watts?

A. There is, my husband.

Q. Mr. Watts is ill at the present time?

A. Yes, sir.

Q. Confined to the home?

A. Yes.

Q. Did you, Mrs. Watts, know a Mrs. Stella Blauvelt during her lifetime?

A. I have known her for forty-five years.

Q. And about how large a woman was she?

A. She was a very small woman, short, barely 5 feet, small-boned and a very well-preserved woman for her years; she was of a long-lived family.

Q. Now, Mrs. Watts,—

Mr. Safier: I did not get the last.

Mr. Roll: She said, "She was of a long-lived family."

Mr. Safier: I move to strike that as being a voluntary statement, and not responsive.

The Court: I will allow it to remain in the record. It would require another question to bring out the matter, merely showing the degree of acquaintanceship, if it is material.

By Mr. Roll:

Q. Mrs. Watts, did you know where she was living at the time of her death?

A. Yes, 744 South Catalina Street.

[fol. 132] Q. Had you seen her there?

A. Yes.

Q. With reference to the date of the 24th of July, 1944, which date, I believe, was on a Monday, when had you last seen her previous to that time?

A. On Saturday, the 22nd, we were together—

Q. Saturday, the 22nd of July?

A. Yes, all day.

Q. Where did you meet her that day?

A. At Bullock's, up in the tearoom, and we had lunch together, went across the street and saw a Mark Twain picture and then visited afterward.

Q. About what time did you leave her on that day?

A. I left her about 4:30 or a quarter to 5.

Q. Where did you leave her?

A. At the corner of—we went over to Sheetz and had ice cream and I left her at the corner of Seventh and Hill.

Q. In Los Angeles?

A. Yes.

Q. Now, at that time she was in good health?

A. Very good health.

Mr. Safier: Objected to as calling for a conclusion and opinion of the witness.

The Court: Overruled.

By Mr. Roll:

Q. So far as Mrs. Blauvelt was concerned, did you know her husband?

[fol. 133] A. I had met him, yes, in Chicago.

Q. Was he living or was he deceased, if you know?

A. He was deceased.

Q. On this date of the 24th—strike that. On this date of the 22nd of July, the day you say you spent most of the day with her and went to the picture show, did you notice on that day whether or not she was wearing any jewelry?

A. Yes, she was wearing her gold wedding ring and two diamond rings, her engagement ring was a solitaire, and then that was next to her wedding ring, and then on top

of that was a platinum ring with a large solitaire surrounded by diamonds, and she always wore them, never took them off.

Mr. Safer: I move to strike that as being an opinion and conclusion of the witness.

[fol. 134] The Court: I think you will have to reframe the question for that purpose.

Mr. Roll: Yes, your Honor?

Q. Now, with reference to the rings which you have described—

The Court: That latter part "She always wore them" will be stricken, because the witness will have to limit her answer to those occasions she is familiar with. You may ask her whether she saw her on other occasions or not.

Mr. Safer: I want to move to strike the entire answer, if your Honor please, on the grounds it is incompetent, irrelevant and immaterial what jewelry she was wearing on the 22nd.

The Court: I think the question as to what property a person owns under the statutory charge is material. That portion of the motion is denied.

Mr. Roll: The only portion that is stricken out was the answer, "She always wore them"?

The Court: Yes. I think the witness can only testify as to how frequently she saw—how frequently she wore the rings.

By Mr. Roll:

Q. How frequently, Mrs. Watts, would you say you have seen her during the period of the last two or three years?

A. Well, she was out at our home very often—I cannot just tell. And then we would meet down town and have [fol. 135] our visits. We averaged about—always about once a week being together.

Q. And that was over what period of time?

A. Well, the last six years, since we have been in California.

Q. Do you remember any occasion during that last six years—withdraw that. What would you say with reference to the rings that you have described in your previous answer, on the occasions that you saw her approximately

once a week during the last six *weeks*, was wearing them or wasn't she wearing them?

Mr. Safier: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

By Mr. Roll:

Q. Do you understand my question?

A. Yes.

Q. You may answer.

The Court: You may answer.

A. I only saw her once without the large ring.

By Mr. Roll:

Q. When was that?

A. That was in mid-winter, because it was being repaired.

Q. Now, with reference to the rings, so we may have a little better description of them—

Mr. Safier: Just a moment. I move to strike out "being repaired".

The Court: It may be stricken.

[fol. 136] By Mr. Roll:

Q. With reference to the rings, so we may have a little better description of them, from your previous answer I believe the ones you have testified to were three in number; is that correct?

A. Yes.

Q. And one was a wedding ring?

A. Yes.

Q. That had no mounting or diamond in it?

A. No, in gold.

Q. Gold wedding ring?

A. Yes.

Q. Will you describe the next ring, please?

A. The next ring was a large solitaire, and I judge, by my own ring that I had, that it was about a carat and a half or a carat and a quarter. It was gold underneath, but the setting, the prongs were platinum.

Q. You have some diamonds of your own?

A. Yes.

Q. You describe this stone you call a solitaire as being a diamond?

A. A diamond, a very blue, white, very clear diamond.

Q. That covers two rings. Now, with reference to the third ring?

A. Well, the solitaire in the center, that was all platinum, the whole ring was platinum and had been designed so that it was raised a little, and the center stone was about the [fol. 137] same size as the engagement or the other stone, the single; and then the surrounding stones were not chips; they were whole diamonds, but smaller.

Q. Are you able to tell the court and the members of the jury how many smaller stones there were in this ring that you are now describing?

A. Well, I know there were at least six, perhaps seven.

Q. Now, Mrs. Watts, after the decease of Mrs. Blauvelt was your husband appointed administrator of the estate?

A. Yes.

Q. Did you some time after she was found, I believe, on the 25th of July, go to her apartment, 410, some time after the 25th of July?

A. Yes, at 744—410, the number of the apartment. I was thinking of the street.

Q. Yes.

A. Yes, I went in the presence of Mr. Wiseman and Mr. Brennan.

Q. Two police officers. This gentleman here (indicating) is Mr. Wiseman?

A. Yes.

Q. Do you remember what date that was?

A. I think it was following the Coroner's hearing.

Q. The Coroner's inquest?

A. Yes. That was about—I don't know; about the 30th or along in there. I cannot—

[fol. 138] Q. Just a minute. Probably we can fix that date.

A. We went in the afternoon after lunch.

[fol. 139] Mr. Roll: Counsel has informed me—I have in front of me, if the court please, a copy of the Coroner's inquest, and it says on the face of it that the inquest was held on the 31st day of July, 1944. I take it, from this statement on the Coroner's inquest, that you will stipulate that is the date of the Coroner's inquest?

The Court: It is already indicated by her answer about the 30th of July.

Mr. Roll: Yes, I just wanted to fix it.

Q. The day the inquest was held, some time that day, is that the day you went to the apartment?

A. Yes.

Q. Did you make a search of the apartment?

A. Yes, we did. They thought that perhaps I knew some—

Mr. Safier: No.

Mr. Roll: You cannot relate what somebody thought.

The Witness: Yes, I did.

By Mr. Roll:

Q. Will you just tell the members of the jury and the court what search you made, and if you did find any rings?

Mr. Safier: Just a moment, Mrs. Watts. We object to that as incompetent, irrelevant and immaterial; what happened on the 31st day of July in regard to searching the apartment has no bearing upon any issue in the case.

The Court: Objection overruled. It would go to the [fol. 140] weight but not the admissibility.

By Mr. Roll:

Q. Go ahead.

A. We, with the help of everyone, why, we gave a very thorough search—

Mr. Safier: I move to strike—just a moment. I move to strike—

The Court: Strike out the word "thorough."

Mr. Safier (Continuing):—"very thorough" as being a conclusion.

The Court: That will be stricken out.

By Mr. Roll:

Q. Go ahead.

A. And found no rings.

Q. Had you secured one of her rings from the Coroner's office, either you or your husband?

A. Yes, her wedding ring.

Q. The wedding ring, that is the one without the diamond or stone in it?

A. Yes.

Q. About how long would you say you spent in making a search of the apartment there?

A. Well, I should judge an hour at least.

Q. And, Mrs. Watts, did either you or your husband as a friend of hers, and your husband being later appointed as administrator of the estate, take into your possession some of her personal belongings?

A. Well, only what the Coroner—

[fol. 141] Q. Well, I mean later on you took some of her furniture and some of her little things out of the apartment?

A. Well, her niece—may I say that—her niece came and I helped dismantle the apartment.

Q. Now, from the Coroner did you also get a wrist watch?

A. Yes, a small gold wrist watch and some beads.

Q. Do you have those beads here with you?

A. Yes.

Mr. Roll: May I see those, please? (Receiving envelope.) I would like at this time, if the court please, to have this envelope marked as an exhibit for identification.

The Court: You mean the envelope and contents?

Mr. Roll: Yes, your Honor.

The Court: 7 for identification.

Mr. Roll: You may cross examine.

Cross-examination.

By Mr. Safier:

Q. Mrs. Watts, you reside in West Los Angeles?

A. Yes.

Q. And you have testified you had known Mrs. Blauvelt how long?

A. Very nearly forty-five years.

Q. How long did she live on Catalina Street, at 744 South Catalina Street?

A. Well, that is a little hard for me to say.

The Court: Just your best judgment.

[fol. 142] A. She sold her home and—

Mr. Safier: Your best recollection.

A. Well, I would say four or five years.

Q. Four or five years. How long have you lived in West Los Angeles?

A. I have been there six years.

Q. How far is it from your home in West Los Angeles to 744 South Catalina Street?

A. Well, I could not say. I should judge about 10 miles, perhaps.

Q. Now, have you seen less of Mrs. Blauvelt during the year 1944 than you did in a few years preceding 1944?

A. No.

Q. I understood your testimony to be that you saw her on an average of once a week?

A. Yes, about an average of once a week.

Q. Would that be in her home or at your home?

A. In my home more, because it gave her the—more at my home and downtown we would meet and have lunch. She would shop and I would shop.

Q. Was it generally on a Saturday that you would meet her?

A. No particular day.

Q. Now,—

A. Because of Red Cross work and all those things our days changed.

[fol. 143] Q. All right. When you would go over to see Mrs. Blauvelt at either her house or go downtown, would you drive?

A. No, I took the bus.

Q. Always?

A. Uh-huh.

Q. Now, you testified on July 31st you went to Mrs. Blauvelt's, to the apartment where Mrs. Blauvelt had been living at 744 South Catalina. What apartment number was that?

A. Well, four hundred and—I don't remember the exact number. It was on the fourth floor, the back apartment.

Q. You do not recall the number?

A. It is four hundred and—I could not remember whether it is twelve or fourteen, because I knew the location so well I just did not—

Q. Well, do you remember it was on the north side of the building?

A. The south side back, east and south, the fourth floor.

Q. Now, when you went to that apartment on July 31st of this year, nobody was living there; is that true?

A. What did you say?

Q. I say, When you went to the apartment, at Mrs. Blauvelt's apartment, the apartment she had occupied on July 31st of this year, was anyone living in the apartment at the time?

A. Oh, no, it was sealed.

[fol. 144] Q. It had been unoccupied for several days, had it not?

A. Yes, since the death of the—

Q. Since the death of Mrs. Blauvelt it had not been occupied?

A. Since the death of Mrs. Blauvelt.

Q. But the furniture was in there, was it not?

A. Yes.

Q. The carpets on the floor?

A. Yes.

Q. Now, in your search of the apartment did you look under the carpets?

A. No, I did not. The men did that. I looked through—

Q. Well, who looked under the carpet?

A. (Continuing:) —the more intimate things of a woman.

Q. Mrs. Watts, who looked under the carpet?

A. I could not tell you that. They were all busy, three men.

Q. Did you specifically see anybody look under the carpets?

A. I was working at the desk—

Q. You can answer yes or no: Did you specifically see anybody look under the carpets?

A. No.

Q. Did you look between the pillows of any of the furniture yourself?

A. No, I did not.

[fol. 145] Q. Did you specifically see anybody taking the pillows out of the furniture and looking through them?

A. Yes.

Q. Who did you see doing that?

A. Well, my husband did it and there were some pillows had been disturbed.

Q. Now, did you see anyone beside your husband looking among the pillows in the furniture?

A. Well, the detectives were all busy.

Q. Now, I did not ask you that. I said, did you see anyone else looking among the pillows of the furniture other than your husband?

A. There were only two pillows.

Q. Well, did you see anyone other than your husband looking into any of the furniture between the pillows or under the pillows?

A. And in the desks, yes.

Q. Let's just stay with the pillows first.

A. Yes.

Q. All right. Who besides your husband did you see doing that?

A. Well, Mr. Wiseman and Mr. Brennan.

Q. You saw them both doing that?

A. They moved the pillows.

Q. All right. Now, on which piece of furniture did you see your husband examining any of the pillows?

[fol. 146] A. Which piece of furniture? A large chair and the pillow was not in place, it was down, it had been disturbed.

Q. On which piece of furniture did you see Mr. Wiseman examining among the pillows?

A. I could not tell you. I was working at the desk part of the time.

Q. Well, which piece of furniture did you see Mr. Brennan examining?

A. Well, they all looked at that chair.

Q. Well, isn't it a fact, Mrs. Watts, that you don't know whether Mr. Wiseman or Mr. Brennan looked under any pillows in connection with any of the furniture in the house?

A. The two pillows—there were only two pillows and they were not in place. One pillow was on the floor and the other was just resting in this chair out of place.

Q. Well, is there a davenport in the living room?

A. Yes.

Q. Has that got some cushions on it?

A. I presume so.

Q. Do you know?

A. Yes, I know.

Q. How many cushions has it?

A. Well, I think it had the three across the bottom.

Q. Now, who did you see, if anybody, looking under those cushions?

[fol. 147] Mr. Roll: Just a moment. I don't know whether they are removable or whether they are stationary. Let's find that out first, otherwise I will have to object to it.

Mr. Safier: I withdraw it.

Q. Are they removable cushions?

A. I don't know about those cushions.

Q. Did you see anybody lifting up any cushions from the davenport and looking underneath them?

A. No, I did not.

Q. What other piece of furniture is there in the living room?

A. There was just a straight guest chair, that pull-up chair that was silent, and the upholstering was not a pillow, and then there was a great big lounge chair.

Q. Has that got a cushion on it?

A. Yes.

Q. Is it a removable cushion?

A. Yes.

Q. Who did you see lift up that cushion, if anybody?

Mr. Roll: Just a moment. I am going to object to that on the ground it assumes something not in evidence.

The Court: Just reframe the question.

By Mr. Safier:

Q. Did you see anybody lifting up the cushion on the chair or making an examination underneath it?

A. There was a loose cushion, the bottom was a loose cushion, and then there was a back pillow, but that wasn't [fol. 148] in place.

Q. Well, did you see anybody handling those cushions and examining around them?

A. No.

Q. Now, on July 22nd, on Saturday, which was the last time you saw her alive; is that correct?

A. Yes.

Q. On that day you testified that she was wearing three rings?

A. She was what?

Q. Wearing three rings?

A. Yes.

Q. Now, on which finger was she wearing the large solitaire, as you have described it?

A. They were all—the three were on the third finger of her left hand.

Q. All three rings were on the same finger?

A. Yes.

Q. What time did you separate from Mrs. Blauvelt on July 22nd?

A. About 4:30.

Q. In the afternoon?

A. In the afternoon.

Q. Where?

A. At the corner of Seventh and Hill, right in front of Sheetz.

[fol. 149] Q. Did you say 4, about 4 o'clock?

A. About 4:30.

Q. About 4:30?

A. Yes.

Q. Might it have been later than that?

A. No.

Q. Might it have been earlier?

A. No.

Q. You are positive it was—

A. It is approximately that time.

Q. Well, when you say approximately that time do you mean it would not vary 15 minutes one way or the other?

A. No.

Q. By "No" you mean it would not vary 15 minutes one way or the other; is that correct?

A. Yes.

Q. Was Mrs. Blauvelt wearing beads on that day?

A. Yes. She generally wore beads.

[fol. 150] The Court: Do you mean this particular string of beads or do you mean—you said she generally wore beads?

A. No, wore beads.

The Court: Different kinds?

A. Different kinds, custom beads.

By Mr. Safier:

Q. Did she wear the beads that you brought in here today, that were marked for identification, that you handed to Mr. Roll; were those the beads that she was wearing?

A. That day she had on a shorter strand, but they—

Q. Mrs. Watts, you can answer yes or no.

Mr. Roll: No, let her—

The Court: Let her finish her answer. It may be a qualification of her answer. Go ahead, Mrs. Watts, please.

Mr. Roll: Go ahead.

A. That strand, or the beads I gave, were her favorite beads; she wore them more than any other.

Mr. Safier: I move to strike the answer as not being responsive. My question was if she wore the string of beads that she brought to court.

The Court: She has answered by describing the set of beads which she wore, which I think is responsive. I do not think a question necessarily must be answered yes or no.

Mr. Safier: Then, I did not understand the answer.

Q. Is the string of beads you have brought to court, which have been marked for identification, the beads that [fol. 151] Mrs. Blauvelt wore when you were with her on July 22nd of this year?

A. No, not that day.

Q. I see. When had you seen Mrs. Blauvelt prior to July 22nd?

A. Well, I don't know as I can tell you that.

Mr. Safier: That is all. I have no further questions.

Mr. Roll: That is all. May this lady be excused, if the court please?

The Court: Yes.

Mr. Roll: I think as far as we are concerned, she may be permanently excused. She has something she can take care of tomorrow. She will be on 'phone call if you need her later.

Mr. Safier: Very well.

(Witness excused.)

Mr. Roll: Mrs. Massey.

MRS. EULALIE MASSEY, called as a witness on behalf of the People, was duly sworn and testified as follows: 8

The Clerk: What is your name, please?

A. Mrs. Eulalie Massey.

[fol. 152] Direct examination.

By Mr. Roll:

Q. Your full name, please?

A. Mrs. Eulalie Massey.

Q. Where do you live, Mrs. Massey?

A. 744 South Catalina.

Q. That is here in the City of Los Angeles?

A. City of Los Angeles, yes.

Q. Are you the manager of the apartment house there?

A. Yes, sir.

Q. What is the name of that apartment?

A. Pandora Apartments.

Q. How do you spell that?

A. P-a-n-d-o-r-a.

Q. Are you of French extraction or nationality?

A. Yes.

Q. How long have you been the manager there of the apartment, Mrs. Massey?

A. Going on six years.

Q. Six years?

A. Five years and a few months.

Q. Were you the manager there of the apartments during the month of July, 1944?

A. Yes.

Q. Did you know Mrs. Stella Blauvelt during her lifetime?

A. No, just when she came to the apartment.

[fol. 153] Q. Well, how long ago did she come to the apartment, about?

A. I am not sure, but about three years.

Q. She lived there for about three years?

A. Three years.

Q. Did she live in the same apartment all those three years?

A. No. She had 308, apartment 308; then she went to Chicago, and when she came back she couldn't get that same apartment, so we gave her 410.

Q. You gave her 410?

A. 410.

Q. About how long had she lived in apartment 410, roughly?

A. Well, I suppose over a year.

Q. Over a year?

A. Yes.

Q. Now, with reference to your apartment, Mrs. Massey, that is, the whole apartment there, there are four floors in the apartment, correct?

A. Yes.

Q. And how many separate apartments are there, including the one that you occupy?

A. Do you mean in the whole house?

Q. Yes.

A. Forty.

[fol. 154] Q. Forty?

A. Yes.

Q. How are they divided as to floors?

A. Ten in each apartment—I mean ten apartments on each floor.

Q. We will take the fourth floor. Are those all what you call single apartments?

A. No.

Q. The ones in the back are singles?

A. Yes.

Q. How many singles are there?

A. About eight in each apartment.

Q. You mean eight on each floor?

A. Yes, on each floor. Then, the doubles in front.

Q. The front of the apartment faces on Catalina Street?

A. On Catalina Street.

Q. Those are double apartments?

A. Yes.

Q. When you say a double apartment you mean an apartment that has a bedroom?

A. Yes.

Q. Is that right?

A. Yes.

Q. Now, with reference to the month of July, 1944, with reference to maid service there—we will take apartment 410, was there any daily maid service furnished there or not?

[fol. 155] A. No.

Q. What was the situation with reference to any maid service there in apartment 410? Did anyone go in and clean up the apartment?

A. Just once every two weeks.

Q. Once every two weeks, is that right?

A. Yes.

Q. What day of the week, if you know, was service furnished there for apartment 410?

A. I think it was on Wednesday.

Q. Every second Wednesday?

A. Every second Wednesday.

Q. Now, you just tell the ladies and gentleman of the jury and the court where your elevator is located with reference to the premises there.

A. It is located almost in the front of the building.

Q. As you come in from the front of the building, which side is it on? Is it on the left hand side or on the right hand side?

A. If I face north it would be on the right side. If I face south or east, it would be on the left side.

Q. Well, let me ask you this: Your apartment faces. I will put it this way: Is the elevator on the north side or the south side?

A. On the north side.

Q. What type of elevator is it?

[fol. 156] A. What type?

Q. Yes, what kind?

A. What kind? I think it is a Hercules.

Q. It is one of those you operate yourself, an electric elevator?

A. Yes.

Q. Is there a stairway leading up anywhere so you can walk up if you want to?

A. Yes, you got the front stairway and a back stairway of the building.

Q. Where is the front stairway?

A. The front stairway, you take it before you get to the elevator, to the right side.

Q. You can go from the first floor to the fourth floor that way?

A. Yes, sir.

Q. You also have a stairway in the back of the building?

A. The same thing.

Q. With reference to the entrance at the front door, as you enter into the apartment itself, do you have a lobby in there?

A. Yes.

Q. Now, with reference to the door there to the apartment, coming out from the street, is that door kept open or shut in the daytime?

[fol. 157] A. It is always open.

Q. I mean, when I say "open", I mean it is not locked?

A. No, no.

Q. How about nighttime?

A. We close it about 10:30; I mean we lock it.

Q. Your tenants have keys which fit the outside door?

A. Yes, and the back door too.

Q. Now, there is a door in the back downstairs; is there not?

A. Yes.

Q. If you go out the back end of your apartment, there on the first floor, what do you come to, an alley?

A. Yes, an alley.

Q. If you go down that alley to the south, you come to what street? Eighth Street?

A. Eighth Street.

Q. Now, with reference to that back door in the daytime, what is the situation with reference to it?

A. Sometimes it is locked and sometimes it is not locked. But at nighttime we lock it early, between 6 and 7.

Q. Where is your apartment there?

A. In the front part of the building on the first floor.

Q. Do you have a linen closet near there somewhere?

A. Near the elevator.

Q. Near the elevator?

A. Yes, opposite.

[fol. 158] Q. Opposite the elevator?

A. Yes.

Q. Now, directing your attention, Mrs. Massey, to the date of Monday, the 24th of July, 1944, did you have occasion on that day to see Stella Blauvelt?

A. Yes.

Q. About what time would you say that you saw her?

A. I saw her once at 10 o'clock; she was ready to go down—to come downtown, and about 3 to 3:30 she came back.

Q. She came back?

A. And I talked to her.

Q. Now, will you state where you were when she came back?

A. Right opposite the elevator, counting the linens, the laundry and linens, and putting it in the closet, in the linen closet. And I talked to her. I opened the elevator—she had a few packages, so I opened the door of the elevator so she could get in easy. That is the last I saw her.

Q. Where were you at the time she came in?

A. Right in front of the elevator door.

Q. With reference to her attire—I am not going to ask you what color dress or anything of that kind or character she had on, but do you recall the—

A. Well, I can tell you. She was dressed up in blue.

Q. She was dressed what?

[fol. 159] A. In blue. She was dressed, and a coat.

Q. A coat. What kind of coat did she have on?

A. Well, it was something like this, but blue.

Q. That is over her dress?

A. Yes.

Q. Would you describe her dress as being a silk dress, rayon or something like that?

A. No, I could not describe it, but it must have been some kind of silk because I never have seen her with anything else.

Q. What time do you fix that as being?

A. About 3 to 3:30; I did not look at the clock, but it must have been about 3:30.

Q. Now, if I understand the answer you gave, that is the last time you saw her alive?

A. Yes, sir.

Q. And do you have a tenant there by the name of Mrs. Vanderveer?

A. Yes.

Q. Do you know what apartment Mrs. Vanderveer was living in as of that date?

A. Yes.

Q. Which apartment?

A. 108, in the first floor.

Q. I do not want you to relate any conversation that you had with Mrs. Vanderveer, but did you see Mrs. Van-
[fol. 160] derveer sometime on Tuesday, the 25th day of July, 1944?

A. No, except in the evening.

Q. Well, that is what I am getting at, some time in the evening?

A. Yes.

Q. About what time did you see her?

A. It must have been between 7:30 and 8 o'clock.

Q. Don't tell us what the conversation was, but did you have some conversation with her?

A. Yes.

Q. Did she say something to you?

A. She told me—

Q. Oh, no, no, you cannot tell that.

A. Yes, she had.

Q. Then, after talking to her, did you go some place with her?

A. I took the key and I went to Mrs. Blauvelt's apartment with her.

Q. You went to Mrs. Blauvelt's apartment with her?

A. Yes, sir.

Q. Now, do you know whether or not Mrs. Blauvelt subscribed for a newspaper?

A. Yes, she had; she had one.

Q. Do you know whether that was a morning paper she subscribed for or an evening paper?

A. Yes, a morning paper.

[fol. 161] Q. Do you know which paper it was?

A. I am not sure, it is the Times or Examiner.

Q. As you went to Mrs. Blauvelt's apartment there on the evening of the 25th of July, 1944, what did you do?

A. Well, I opened the door. I looked at her bed and I looked all around and I could not see her, so I lit the apartment and I saw her dead right on the floor.

Q. Now, do you recall whether or not on that occasion, either immediately after going into the apartment or coming out, or while you were waiting to go in, did you notice any newspaper there?

A. No.

Q. You are not able to say?

A. Well, I don't remember; it could have been there but I don't remember.

Mr. Roll: All right. I have here a photograph which I will ask be marked People's Exhibit, I believe, 8, your Honor, for identification.

The Court: Yes.

By Mr. Roll:

Q. With reference to the scene which is depicted in People's Exhibit 8, with the exception of the lower portion of the man which is shown in the picture there, is that a fair representation of the scene you observed when you turned the light on in the room?

(Handing photograph to the witness.)

A. Yes, sir, just exactly.

[fol. 162] Q. I am going to direct your attention to this photograph which has been identified by the autopsy surgeon, Dr. Webb. Do you recognize the lady whose picture is shown there as being Stella Blauvelt, a person you knew during her lifetime?

A. I do.

Mr. Roll: Did you get the answer?

(Answer read.)

A. Yes.

The Court: Which numbered photograph is that?

Mr. Roll: I showed her People's Exhibit No. 3, your Honor.

Q. Now, after you got in the room there and turned the light on and saw what you have testified concerning, what was the next thing you did? Don't tell any conversation, but what did you do?

A. I went out right away.

Q. Did you either 'phone the police yourself or call someone there in your apartment to 'phone the police?

A. One lady was in my apartment and she say, "I will call the police for you, Mrs. Massey," because I was a little nervous, and she did.

Q. How long would you say, to the best of your recollection, after you were up there in the room and saw what you testified here, was it until the police arrived there?

A. Well, I don't think it took five minutes. Of course, [fol. 163] it might take two or three minutes to go down, but the minute I called the police, the police was there in no time.

Q. Now, as the manager of the apartment house there had you been in Mrs. Blauvelt's apartment at some time a short time before the date of the 24th of July?

A. I was there on Friday.

Q. On the Friday before?

A. Before, Friday evening.

Q. Friday evening. And was Mrs. Blauvelt there herself?

A. Yes.

Q. And did you spend some time there with her?

A. About an hour.

Q. About an hour. With reference to this apartment that she had rented, in so far as I—I am not going to go into a lot of details with you, but I want you to turn around, if you will, and look at the diagram here. So far as the kitchenette is concerned, and this garbage disposal unit—

The Court: Just back a little, Mr. Roll.

Mr. Roll: Yes, I am sorry.

Q. —which is shown over here in a larger scale, so you know what I am referring to—

A. Yes.

Q. —at the present time, this door is off of there; is that right?

[fol. 164] A. Yes.

Q. With reference to the apartment No. 410, that apartment did have a door—we have that “D-1” here and “D-1” here, and it still does have a door on the outside; is that right?

A. Yes.

Q. And it did have a door on this inside “D-2”; is that right?

A. Yes.

Q. Did you ever give this defendant permission—that is this man over here, Mr. Adamson, seated at the end of the counsel table, permission to enter that apartment house?

A. I have never seen him before—no.

Q. And any entry by him was without your consent and against your will; is that correct? In other words, you did not tell him he could come in there or consent to his coming in?

A. No.

Mr. Roll: You may cross examine.

Cross-examination.

By Mr. Safier:

Q. Mrs. Massey, lots of people went in and out of this Pandora Apartment building without getting any consent from you, didn't they?

A. Uh-uh, no.

[fol. 165] Q. Now, you mean if some tenant had some friend calling on him or on them, that they would have to go and get your permission to enter first?

A. Well, I ask them where are they going and they tell me—unless I don't see them.

Q. Then, is it your testimony that—strike that. How many tenants do you have in this building?

A. Between 60 and 65.

Q. And is it a rule of the house that you have to give permission to everybody that goes in and out of the house?

A. It is not the rule but I watch that.

Q. You mean you stay at the front door all the time and watch who goes in and out?

A. To a certain extent, yes.

Q. How long do you stand by that front door during the day watching?

The Court: Just a minute. She did not say she stood at the front door.

By Mr. Safier:

Q. Well, do you stand at the front door and watch who goes in and out?

A. No, but my apartment is in front.

Q. Your apartment is in front?

A. I open the door and I see everything.

Q. You mean every time you hear the front door open you go and see who is coming?

A. If I do not recognize the steps, yes.

[fol. 166] Q. Now, do you instruct your—oh, strike that. Is it one of the rules of the apartment house that the tenants may not have guests unless such guests first obtain your permission to enter?

A. No, I am not that severe, but I want to know who comes just the same. I want the right kind of people.

Q. Well, do you make any—if somebody should come in the front door that you don't recognize do you ask them where they are going?

A. I ask them what I can do for them so they have to tell me where they want to go.

Q. I see, and if they tell you where they want to go is that sufficient, or do you make some further inquiry to determine who they are?

A. Well, if they look pretty good to me, I can trust them, I let them go, but if it is somebody I don't they take the door and go out.

Mr. Safier: I did not get the last part.

The Witness: If it is somebody that—

The Court: Did you get the answer, Mr. Kennelly?

The Reporter: Yes.

The Court: Just a minute. Will you read the answer, Mr. Kennelly?

(Answer read.)

By Mr. Safier:

Q. The front door is kept unlocked during the daytime, you said?

[fol. 167] A. Yes.

Q. And the back door is kept unlocked until about 6 or 7 in the evening; is that correct?

A. No, later than that, about 9 or 9:30, sometimes 10 o'clock. When some of our tenants ask me to leave it open until 10 o'clock, they are expecting somebody, some company, then I do it because they have no key to come in.

Q. Are you referring now to the front door or the back door?

A. How was that?

Q. Are you referring now to the front door or back door?

A. To the front door. The back door is closed early.

Q. The back door is closed between 6 and 7 in the evening; is that right?

A. Yes, sometimes—

Q. That is, it is locked between 6 and 7 in the evening?

A. Yes, uh-huh.

Q. Now, do various people come into the building and deliver meat?

A. No.

Q. And groceries and things like that to the tenants?

A. No, not during the war.

Mr. Roll: I did not hear you.

Mr. Safier: "Not during the war."

The Witness: They have got to carry their own packages.

By Mr. Safier:

[fol. 168] Q. Does the paper boy come and leave papers?

A. Yes.

Q. Does he go up and down the steps and leave papers wherever he has to leave papers—

A. Sure.

Q. On the different floors?

A. Sure.

Q. Now, are you home every day, Mrs. Massey, or are you away sometimes during the day?

A. Very seldom; in five years I have gone three or four times. I always leave somebody at home.

Q. Now, you had known Mrs. Blauvelt about three years, I think you said?

A. Yes.

Q. When did she move into apartment 410?

A. Well, I don't remember exactly. She went to Chicago and then when she came back—I don't know if it was in September or October—I should have the book here.

Q. You mean October or November, 1943?

A. 1943.

Q. Now, tell me again when was the last time you saw Mrs. Blauvelt alive?

A. On Friday, the week before—the week before she was killed.

Q. On Friday?

A. Yes.

[fol. 169] Q. That was the last time you ever saw her alive?

A. The last time I ever saw her—no, I saw her on Monday at 10 o'clock, on Monday, she was ready to come downtown, and then I saw her at 3 to 3:30. That is when I opened the elevator door for her to come to the apartment, to her apartment.

Q. Now, is Monday, July 24th, between 3 and 3:30 o'clock in the afternoon the last time you saw Mrs. Blauvelt alive?

A. Yes.

Q. Are you certain it was between 3 and 3:30?

A. Yes, I am certain.

Q. Might it have been earlier than 3 o'clock?

A. No.

Q. Might it have been later than 3:30?

A. No.

Q. You are positive?

A. I am positive.

Q. Very well. Where were you at the time you saw her?

A. In front of the elevator door counting the linens.

Q. You were counting the linens?

A. Yes.

Q. Did Mrs. Blauvelt come in the front door or back door?

A. She came in the front door.

Q. I think you said she had some packages in her hands?

A. Yes, very small, little ones that she had.

Q. How many?

[fol. 170] A. Well, I don't count them; two or three.

Q. She had her coat on, you said?

A. Yes.

Q. And hat?

A. Yes.

Q. And shoes?

A. Shoes.

Q. Stockings?

A. Yes.

Q. You are certain of that?

A. How is that?

Q. Are you sure she had stockings on?

A. Yes, she did, but she didn't have them when I found her dead. Somebody got away with those stockings.

Mr. Safier: I move to strike the last part of the answer as not being responsive and a voluntary statement.

The Court: I will strike the latter portion of the answer.

By Mr. Safier:

Q. Then where did Mrs. Blauvelt go?

A. When?

Q. After you saw her come into the building. Did she go some place?

A. No, she took the elevator. I opened the door for her to go to her apartment.

Q. She took the elevator and went up?

A. To the fourth floor.

[fol. 171] Q. That is the last you saw of her?

A. That is the last.

Q. That is the last you saw her alive?

A. Yes.

Q. What day did you say you had maid service on the fourth floor in July of this year?

A. Wednesday.

Q. Are you certain about that?

A. Yes.

Q. Positive about it?

A. Yes.

Q. Every Wednesday?

A. Every other Wednesday.

Q. I see. Now, what time on July 25th was it that Mrs. Vandiveer came to your apartment?

A. Between 7:30 and 8 o'clock.

Q. In the evening?

A. Yes.

Q. On Tuesday?

A. On Tuesday.

Q. You are certain of that time, too?

A. Yes, sir.

[fol. 172] Q. Now, between the time you last saw Mrs. Blauvelt alive—strike that. You had some conversation with Mrs. Vandiveer the day you went up to room 410; is that right?

A. Any conversation? Yes.

Q. Then you went up to her apartment, apartment 410?

A. Yes.

Q. With Mrs. Vandiveer?

A. Yes.

Q. Was the door to apartment 410 locked or unlocked?

A. It was locked.

Q. It was locked?

A. Yes.

Q. Are you certain about it being locked, Mrs. Massey?

A. It was locked.

Q. Do you remember testifying in this matter on September 1, 1944, at the preliminary hearing?

A. I don't remember.

Q. Well, you did testify at the preliminary hearing?

A. Yes, I did.

Q. You remember that, don't you?

A. Sure.

Q. Well, I will ask you to read—

Mr. Roll: What page, counsel; please?

Mr. Safier: 5.

Mr. Roll: Line?

Mr. Safier: 3 to 4.

[fol. 173] Q. I show you a transcript of your testimony, page 5, lines 3 and 4, and ask you to read that question and answer.

(Witness does as requested.)

A. Well, that is—

Q. Just a minute. Have you read this?

A. I just read it now.

Q. I will ask you if this question was asked and whether you gave this answer:

“Q. Was the door unlocked?”

A. Yes.”

Was that question asked you and did you give that answer?

Mr. Roll: Just a moment. I am going to ask counsel to read the next two lines in the transcript.

The Court: All right, you can clear it up on redirect. The word “unlocked” may mean it was not unlocked or somebody locked it.

The Witness: I used a passkey to open it.

Mr. Safier: Do you stipulate that the reporter will testify, Mr. Roll, that that question was asked and that answer given?

Mr. Roll: I will so stipulate providing, counsel; you will stipulate that in the same testimony, at lines 6 and 7 on page 5, there is an additional answer on that subject. And if you will look at page 8, lines 18 to 20, there is a full explanation of it. I will stipulate to that if you will stipulate to this.

Mr. Safier: Yes, I will stipulate to whatever testimony [fol. 174] there is there.

The Court: I presume that stipulation means all the testimony may be read?

Mr. Roll: Yes, your Honor.

The Court: Is that correct, Mr. Safier?

Mr. Safier: Yes, that is correct, your Honor.

Q. Now, was there a newspaper in front of the door at that time?

A. I don't remember.

Q. You don't remember whether you picked up a paper?

A. No, I didn't pick it up.

Q. You didn't pick any paper up; you don't remember whether there was one there or not?

A. No.

Q. Now, was the door locked or was it unlocked?

A. I used a passkey to open it. I don't remember if I tried to open it without the passkey, but I don't think I did.

Q. Did you knock at the door first?

A. Yes.

Q. But you don't remember whether you tried it before you put your key into the lock?

A. I must have tried it.

Q. You are not certain?

A. No, I am not certain.

Q. Did you just look into the room—you did open the [fol. 175] door?

A. Yes.

Q. Did you just look into the room or did you go into the room?

A. First I look in the room; I opened the door about that much (indicating). I was kind of scared and nervous.

Q. I understand that.

A. Then I opened it a little bit more. When I didn't see her—I didn't see anything, I open it altogether and I put the light—I light the lights.

Q. Did you walk into the room?

A. Yes, I walked into the room.

Q. Mrs. Vandiver walked into the room with you—

A. With me.

Q. —or did she remain in the hall?

A. No, she came in with me.

Q. You walked into the room. Did you say you turned the light on?

A. I turned the light on and then I walked into the room.

Q. When you looked into the room what did you see?

A. I saw her laying down on the floor, covered, two pillows over her face, and then that lamp cord. I didn't touch the pillows; I didn't see what it was under—I didn't see if the cord was on her neck, but I saw the cord start to it. I didn't have the courage to look to see whether [fol. 176] it was, how that cord was going in there.

Q. Did you touch anything at all?

A. No.

Q. You did not see any cord around her neck?

A. No, I didn't lift—I didn't touch the pillows; she was covered.

Q. What was she covered with?

A. Two pillows; one on top of the other, and a coat.

Q. Now, which portion of the body did the coat cover?

A. All of her except her feet.

Q. Did it cover her hands?

A. No, I could see one hand this way; I could see the wrist watch there too.

[fol. 177] Q. Which hand was it?

A. I think it was the left.

Q. In what position did you see the left hand?

A. A little bit out.

Q. Straight out from the body like this (indicating)?

A. Yes.

Q. Indicating a position directly horizontal to the body?

A. Yes.

The Court: No, I would say at right angles to the body.

Mr. Safer: Right angles to the body.

Q. Did you see the other hand at all?

A. I think I did, but I got nervous and didn't look so much.

Q. You don't remember seeing the other hand at all?

A. Not so very well, but it seems to me I see it, but not as plain as the other.

The Court: I think we will take our recess at this time. We have gone a little over our recess time. Apparently we cannot finish, anyhow. During this recess, ladies and gentlemen, keep in mind you are not to talk about the case or form or express any opinion. Take our afternoon recess.

(Recess.)

The Court: Give me that full name again.

Mr. Roll: Lieut. Harry Rogers.

The Court: Under the provisions of the Code of Civil [fol. 178] Procedure Harry Rogers, the head of the Fingerprint Department of the Sheriff's Office, is appointed as expert to make the examination of the fingerprints in this case and report the matter to the court, to be available as a witness for either party, under Section 1871 of the Code of Civil Procedure.

Mr. Roll: May counsel and I approach the bench?

The Court: Yes.

(Conference at bench between court and counsel.)

(The jurors returned into the courtroom and resumed their seats in the jury box.)

The Court: The record will show the jury, counsel and defendant present. You may proceed. Mrs. Massey, please.

By Mr. Safier:

Q. Mrs. Massey, I will show you your testimony at the preliminary hearing in this case page 5, lines 10 to 17, and I will ask you to read it to yourself.

(Handing transcript to the witness.)

A. What is it, please?

Q. Lines 10 to 17. Have you now read that to yourself?

A. Yes, sir.

Q. I will ask you if these questions were asked and if you gave these answers:

"Q. Now, will you describe how she was lying there?

"A. Yes.

"Q. Was there anything close to her?

"A. She was lying on the floor with her hands this way (indicating).

[fol. 179] "Q. With her hands outstretched above her head; is that right?

"A. Yes." Were those questions asked and did you give those answers at the preliminary hearing?

A. Well, I might have done it, yes.

Q. Mrs. Massey, how long did you stay in the apartment at that time?

A. Not two minutes.

Q. Did you notice whether anything was disturbed in the apartment?

A. No, nothing was disturbed.

Q. When you went out of the apartment did you close the door or did you leave the door open?

A. I did close the door.

Q. Did Mrs. Vandiveer leave with you?

A. Yes.

The Court: Will counsel step up to the bench here a minute?

(Conference at bench between court and counsel.)

The Court: You may proceed.

Mr. Safier: May I have the last question and answer read back?

(Record read.)

By Mr. Safier:

Q. Now, between the time that you last saw Mrs. Blauvelt alive between 3 and 3:30 on the afternoon of July 24th, and the time you entered her apartment about 7 or 7:30 in the evening of July 25th, had you heard any noise, [fol. 180] commotion or anything in Mrs. Blauvelt's apartment?

A. No.

Q. Were you on the fourth floor of the building at any time after 3:30 on July 24th this year?

A. No, I didn't.

Q. You did not go on the fourth floor on July 24th at all in the afternoon or evening?

A. No.

Q. Did you at any time on July 25th, prior to 7:30 in the evening, go to the fourth floor?

A. I might have, but I don't remember.

Q. You don't remember?

A. No.

Q. Who occupies the apartment on the same side of the building as apartment 410, immediately next to apartment 410?

A. A lady by the name of Miss Nilson.

Q. Miss Nilson?

A. Yes, sir.

Q. How do you spell that?

A. N-i-l-s-o-n.

Q. Does she occupy the apartment—

A. 308.

Q. I am talking about the fourth floor.

A. I mean 408.

Q. Did she occupy 408 on July 24th and July 25th of this year?

[fol. 181] A. Yes.

Q. Did she occupy the apartment alone or some other people live there?

A. No, she is all alone.

Q. Did you see anybody enter or leave Mrs. Blauvelt's apartment between 3 to 3:30 in the afternoon of July 24th?

A. No.

Q. And 7 to 7:30, July 25th?

A. No.

Q. Did you see a strange woman around the building at any time on July 24th or July 25th of this year?

A. No, I didn't.

Q. Between 3 to 3:30 on July 24, 1944, and 7 to 7:30 on July 25, 1944, who, if anyone, did you see go to the fourth floor of the building?

A. Well, the only—you know—they all come at night and go to bed—cook their dinner and go to bed, and then they leave in the morning.

Q. I am just inquiring as to anybody you might have seen.

A. The one I saw is Mrs. May. She came to my apartment in the morning, the 25th.

Q. Mrs. May?

A. May, M-a-y.

Q. What apartment does Mrs. May occupy?

A. 409, opposite Mrs. Blauvelt's apartment.

[fol. 182] Q. I see. Anybody else?

A. I might have seen all of them, but I don't remember now.

Q. You don't remember now?

A. No.

Q. When you entered apartment No. 410 on July 25 about 7 to 7:30 in the evening, did you go into any room other than the living room?

A. No.

Q. I believe you testified that at the time you saw Mrs. Blauvelt's body on the floor you noticed a wrist watch?

A. She had it on.

Q. Did you also notice whether she had on some rings?

A. She didn't have it.

Q. That is, what hand did you see?

A. She didn't have it.

Q. Which hand, now, was it that you noticed?

A. Well, I think it was this one (indicating).

Q. The left hand?

A. When she is—the one I could see most. You know, it was this way (indicating).

Q. Was it the left hand you could see?

A. Yes, that is the one.

Q. You are certain it was the left hand?

A. Yes. The other I could see, too, the other, but not as well as the left one.

[fol. 183] Q. Did you see any beads?

A. They were on the floor.

Q. The beads were on the floor?

A. Yes.

The Court: Before she died which hand did she wear the rings on?

A. To tell you the truth, I never paid no attention.

The Court: I see.

By Mr. Safier:

Q. Did you ever notice Mrs. Blauvelt ever wearing any rings at all?

A. Oh, yes.

Q. What rings did you notice?

A. They must have been diamond rings. I noticed it every time she came to pay me the rent, but I never paid much attention to it.

Q. She paid you the rent once a month, was it?

A. Every month.

Q. How many diamonds, diamond rings, did you see her wearing?

A. I never count.

Q. More than one?

A. I know she had quite a few, but I never count them.

Q. How many did you see her wear when she paid the rent?

A. I couldn't tell you; I never counted them. I know she had quite a few.

Q. Well, did you sometimes see her without any rings on?
[fol. 184] A. No.

Q. When she paid the rent?

A. No, she always had.

Q. Did you see a paper boy around the building at any time on July 24 or July 25th?

A. No.

Q. You did not?

A. Well, they do come, yes, it is young fellows about ten or twelve years old.

Q. Or, did you see them around there that day, July 24th or July 25th?

A. They come every day.

Q. Did you see them?

A. Yes.

Q. What day did you see them, July 24th or July 25th?

A. Every day I see them, the 24th and 25th.

Q. You see them every day. What time of the day did you see them on July 24th?

A. Well, they haven't got no regular hours but it is between 4 and 6 o'clock.

Q. When you say "they" do you mean that there is more than one?

A. How?

Q. When you say "they" do you mean that there is more than one?

A. Yes, there is more than one.

[fol. 185] Q. How many are there?

A. There is three in the afternoon and two in the morning.

Q. There are five paper boys come to the building?

A. Three boys.

Q. Three boys?

A. Yes, there is five altogether, two in the morning and three in the afternoon.

Q. There are five altogether?

A. Yes.

Q. How many did you see enter the building on July 24th?

A. The same amount.

Q. Five?

A. Five.

Q. Did you see five enter the building on July 25th?

A. Yes.

Q. Now, do you remember what time of the day you saw any of these newsboys enter the building on July 24th?

A. Well, they come in the afternoon every day.

Q. Well, did they come in the afternoon on that day?

A. Yes.

Q. On July 25th, too?

A. Yes.

Q. Now, after you left Mrs. Blauvelt's apartment on the evening of July 25th where did you go?

A. I went and talked to my help; I went straight to their [fol. 186] apartment.

Q. You went to whose apartment?

A. To Mr. and Mrs. Frick, they work for me and I told them the news.

Q. Well, now, I don't want to know what you told them. I just want to know where you went. Now, at the time you were in apartment 410 the evening of July 25th did you notice whether any of the cushions either on the davenport or the chairs were disturbed?

A. Say that again?

Q. When you went into apartment 410 on July 25th between 7 and 7:30 in the evening did you notice whether any of the cushions either on the davenport or chair were disturbed?

A. The cushions on the davenport they were not disturbed except one extra little one, a throw cushion was on top of her face, and the other cushion from the chair was on top of the other little cushion, so she had two over her face.

Q. She had two on her face?

A. Yes.

Q. Was one on top of the other or were they side by side?

A. One on top of the other.

Q. Did you move the cushions at all?

A. No.

Q. Now, on July 25, 1944, in the evening did you lock the back door yourself?

[fol. 187] A. Sometimes I do it; sometimes just the help.

Q. Well, do you remember whether or not you personally locked the back door?

A. I think they done it.

Q. Wait a minute. On July 24th?

A. We do it every night.

Q. Well, do you remember whether on that particular day you did it?

A. Oh, yes, we locked it.

Q. That does not answer the question, Mrs. Massey, I am sorry.

A. Well, yes.

Q. Do you remember whether you yourself locked the back door?

A. I don't remember whether I did it, but I know we lock it. Sometimes it is my daughter, sometimes it is myself, sometimes it is the help, but I watch and see that the door is locked and if it is locked I don't have to look at it.

Q. Did you check the back door on the evening of July 24th to see whether it was locked?

A. Yes.

Q. What time did you check the door?

A. Well, I don't remember exactly what time.

Q. Approximately?

A. It must have been between 6 and 8 o'clock if I am not mistaken.

[fol. 188] Q. I am talking about the back door. Did you check the back door on July 25th to see whether it was locked?

A. Yes.

Q. Was it locked on both occasions?

A. Yes.

Q. Did you check it about the same time on July 25th as you did on July 24th?

A. More or less: A few minutes more or less.

Q. Let me inquire as to what time in the morning the back door is unlocked.

A. About 6—no.

Q. Is that true every day?

A. No, I think about 7 to 7:30.

Q. About 7 to 7:30 in the morning the back door is unlocked?

A. I think so.

Q. That is every day?

A. Yes.

Q. What time in the morning is the front door of the building unlocked?

A. Well, between 7:30—no, 6:30, I think, until about 9 or 9:30.

Q. Some time between 6:30 and 9:30?

A. 9:30 in the evening. Between 6 in the morning, or 6:30 in the morning until about 9 or 9:30 in the evening.

Q. During that interval the front door is unlocked?

[fol. 189] A. It is unlocked. It is closed but unlocked.

Q. Now, on the afternoon of July 24th—strike that.

Mr. Safier: I think that is all.

Redirect examination.

By Mr. Roll:

Q. Now, counsel read from the transcript—

The Court: I assumed the stipulation was you could simply read that into the record without having to ask the witness.

Mr. Roll: All right, your Honor. (Addressing the witness) Just a minute. I have got some more questions. I would like to read this into the record at this time.

Mr. Safier: Page what?

Mr. Roll: Reading from page 5. Counsel asked with reference to lines 3 and 4. "Q—Was the door unlocked? A—Yes. Q—Did you open the door? A—With a passkey."

Then, on cross examination, at page 8, line 15: "Q—And then when you went into Mrs. Blauvelt's apartment did you open the door to her apartment with a key? A—With a passkey. Q—In other words, the door from the hall leading into her apartment was locked at that time; is that correct? A—Yes, it was locked."

Now, counsel asked you a question with reference to whether anything appeared to be disturbed or not, in the apartment. I am going to show you your testimony on page 6, line 15, and ask you to read that, if you will. You [fol. 190] can read lines—start at 10, and just read it to yourself, down to—

A. To 17?

Q. Yes, you can read to 17. I will catch that in a minute.

(Witness does as requested.)

A. Yes.

Q. Now, I will ask you with reference to whether you observed anything being disturbed—

Mr. Safier: : Just a minute. I am going to object to counsel impeaching his own witness.

Mr. Roll: I am not impeaching my own witness.

The Court: At least, let him finish his question before you object.

By Mr. Roll:

Q. What did you pay particular attention to when you were there in the apartment?

A. The pillows were up over her mouth—over her face, and then I looked to see whether—

Mr. Safier: I cannot hear a word.

A. Nothing was touched.

The Court: Can you talk into that microphone, Mrs. Massey? Then we can hear better.

A. I didn't notice anything disturbed beside the two pillows over her face. One pillow came from the couch and the other from the chair next to her.

By Mr. Roll:

Q. When you got into the room what was the main object [fol. 191] you were looking at?

A. At her.

Q. At her?

A. Yes.

Q. Now, counsel asked you with reference to the apartment which is next door to the apartment that Mrs. Blauvelt occupied, on the same side; what is that number again?

A. 408.

Q. You said it was a Miss or Mrs. Nilson?

A. Miss.

Q. Miss Nilson?

A. Yes.

Q. In so far as she is concerned, do you know whether or not during the month of July, and particularly around the 24th and 25th of July, was she employed at that time?

A. Yes.

Q. Working in the daytime?

A. Working in the daytime.

Q. With reference to the most of the tenants there, with the exception, we will say, of Mrs. May up there on that floor, were those people employed people?

A. All of them except one lady. I think that day she was at the Red Cross.

Q. Now, counsel asked you concerning locking this back door downstairs, that leads out into the alley. I will ask [fol. 192] you with reference to that door, when you lock that door, if you are on the outside in the alley and you want to get in, you cannot come in; is that right?

A. Unless you have a key.

Q. When you are on the inside and you want to go out, you do not have to unlock it, you just turn the door knob, is that right?

A. Yes.

Q. It is one of those catch locks that you can lock it and it locks from the outside?

A. Just pull the door open, yes.

Q. But anyone on the inside who wants to go out can go out?

A. Yes.

Q. Now, I show you here, Mrs. Massey, People's Exhibit 8, and I am going to show you a smaller photograph, which I will ask be marked People's Exhibit 9—

The Court: It may be so marked.

By Mr. Roll:

Q. Do you remember seeing that photograph at the preliminary hearing?

A. I think I did, yes.

Q. Does that fairly represent what you saw there with the exception—

A. Yes.

Q. (Continuing)—of the man's legs in there, when you got in there?

[fol. 193] A. Yes, it is just the same.

Mr. Roll: No further questions.

The Court: Any recross?

Recross-examination.

By Mr. Safier:

Q. Have you told us everything that you observed when you went into Mrs. Blauvelt's apartment?

Mr. Roll: I object to that on the ground—

A. Yes, everything.

Mr. Roll: Just a moment.

The Court: Sustained. Sustained on the ground it is not recross examination. It is already covered on cross examination.

Mr. Safier: No further questions.

Mr. Roll: No further questions.

(Witness excused.)

The Court: We will take our recess at this time until 9:30 tomorrow morning. The jury keep in mind, please, the admonition not to talk about the case or form or express any opinion until the case is finally submitted to you. Take a recess until 9:30 tomorrow morning.

Mr. Roll: Will your Honor be kind enough to ask all witnesses to return tomorrow morning? Do you want Mrs. Massey back, counsel?

Mr. Safier: No.

The Court: She may be excused. The other witnesses [fol. 194] will return here tomorrow morning at 9:30.

(Whereupon an adjournment was taken until Thursday, November 16, 1944, at 9:30 o'clock a. m.)

[fol. 195] Thursday, November 16, 1944; 9:30 o'clock A. M.

The Court: In the case of People vs. Adamson the record will show the jury, counsel and defendant present. I think we had finished with Mrs. Massey, hadn't we, at the end of the day?

Mr. Roll: Yes, your Honor.

The Court: We had finished with Mrs. Massey, that is right.

Mr. Roll: Mr Heck.

FRANK H. HECK, called as a witness on behalf of the People, was duly sworn and testified as follows:

The Clerk: What is your name, please?

A. Frank H. Heck.

Direct examination.

By Mr. Roll:

Q. Your name is Frank H. Heck?

A. That is right.

Q. The last name is spelled "H-e-c-k"?

A. H-e-c-k.

Q. Where do you live, Mr. Heck?

A. 744 South Catalina.

Q. About how long, sir, have you lived there?

A. About two years.

[fol. 196] Q. At what apartment number do you live?

A. 308.

Q. Were you living in that apartment on the date of the 24th day of July, 1944?

A. I was.

Q. What is your occupation, sir?

A. Division Plant Supervisor for the Southern California Telephone Company.

Q. How long have you been engaged in that particular occupation, approximately?

A. About a year.

Q. How long have you been with the 'phone company?

A. About twenty-five years.

Q. Now, with reference to apartment 308 there at this address that you are living at, I take it that is on the third floor, sir?

A. It is.

Q. On which side of the building?

A. The south side.

Q. And is your apartment a single or a double?

A. A single.

Q. Where is it with reference, Mr. Heck, to the rear of the building?

A. It is next to the last apartment in the building to the rear.

Q. Next to the last apartment. Now, directing your attention, sir, to the afternoon of the 24th—

The Court: May we get just a little more location on this apartment? Do you know where 408 is?

A. 408 would be directly above me.

The Court: Directly above you?

A. Yes.

The Court: You may proceed.

Mr. Roll: Well, probably we will tie it in a little better with your Honor's question.

Q. Subsequent to the 24th you learned about a lady being found deceased up there in a room; is that correct?

A. I did.

Q. Will you just tell us with reference to that apartment, that is 410, is that not correct?

A. I understood it was in 410.

Q. Your apartment was up on the next floor, you being on the third floor your apartment would be right next door to it; is that right?

A. Yes, sir, that is right.

Q. Were you home on the afternoon of the 24th day of July, 1944?

A. I was.

Q. On vacation or starting vacation?

A. I was starting vacation.

Q. What day of the week was that, do you remember?

A. It was on Monday.

[fol. 198] Q. On a Monday?

A. Monday.

Q. Along in the afternoon about 3 or 3:30 did you hear something unusual?

A. I did.

Q. About what time would you say it was, as nearly as you can fix it?

A. 3:30.

Q. With reference to the door to your apartment, Mr. Heck, at the time you heard this, was the door to your apartment open or closed?

A. It was open.

Q. What portion of your apartment were you in, sir?

A. In the living room, facing the door.

Q. When you say the living room, that is a single apartment?

A. It is.

Q. You have a pull-down bed?

A. That is right.

Q. And also use it as a bedroom?

A. That is right.

[fol. 199] Q. Were you seated or standing?

A. Seated.

Q. How close to the door, approximately?

A. Oh, I should say the full width of the room.

Q. Now, is there a stairway that comes down some place near the rear of your apartment?

A. That is the rear stairway, yes. It is to the right of my door.

Q. Will you tell the court and the members of this jury what this noise was that you heard, what it sounded like to you?

A. I heard a muffled scream and then a thud against the door, and no further noise after that.

Q. From where you were, could you determine from that sound of the scream as to whether it appeared to you to be a man's voice or a woman's voice, or could you tell at all?

A. First of all, the noise that I heard—I was unable to determine the first noise, but whatever it was, it was of such a character that I got up from the chair and walked to the door, and I determined the noise was coming from my right. It was while I was standing in the door that I heard the scream and the thud against the door.

Q. Now, with reference to the scream, could you say whether, from your hearing it, whether it appeared to be a man's voice, a woman's voice, or did you make any determination at all?

[fol: 206] A. I judged it would be a woman's voice.

Q. After what you have told us did you hear any more noise?

A. Not another sound of any kind.

Q. What did you do then?

A. I went back and I resumed reading my book.

Mr. Roll: You may cross examine.

Cross-examination.

By Mr. Safier:

Q. Mr. Heck, how do you fix the date as being July 24th?

A. First of all, I verified my company's payroll record; secondly, I verified a charge-out card in the corner drug-store on two books that I had drawn out on the first day of my vacation.

Q. Was July 24th the first day of your vacation?

A. On Monday, yes, sir.

Q. How do you fix the time as being about 3:30 in the afternoon?

A. The noise that I heard and that I determined as being unusual in character, I glanced at a small table clock after I sat down.

Q. Exactly what time was it on that small table clock?

A. 3:30.

Q. Was there anyone else home in your apartment at that time?

[fol. 201] A. No, sir.

Q. You said you had your front door open?

A. That is right.

Q. Do you ordinarily keep your front door open?

A. No, sir. I was smoking a cigar, and as the apartment is rather small I didn't want it to get too stuffy.

Q. Now, when you testified that your apartment is immediately below apartment 408, do you know that to be a fact of your own knowledge or—

A. Yes, I do.

Q. (Continuing)—just surmise that to be so?

A. I know that to be a fact.

Q. Had you ever been up on the fourth floor?

A. Not prior to Monday, the 24th.

Q. Well, after Monday, the 24th, had you been up on the fourth floor?

A. Subsequent to the events on July 25th, yes.

Q. Were you in apartment 408?

A. No, sir.

Q. Where you ever at any time in apartment 408?

A. No, sir.

Q. You simply judged, then, that your apartment is immediately below 408, is that correct?

A. No, sir. I talked to the occupant of 408—

Q. Now, just a minute. Do not relate any conversation that you had.

[fol. 202] Mr. Roll: Wait a minute. Counsel asked the question—he said he simply judged, and I think he is entitled to—

The Court: May we have the question?

(Question read.)

The Court: We will leave the answer as far as it has gone. Let us have another question.

By Mr. Safier:

Q. Now, you testified, I believe, that you were in the living room at the time you heard this scream?

A. That is right.

Q. Did you hear more than one scream?

A. No, sir.

Q. Just one scream?

A. Just one scream.

Q. And then a thud?

A. Yes, sir.

Q. You could not tell at that time where that scream came from, did you?

A. Only from my right.

The Court: When you say—you used that same expression, Mr. Heck, a minute ago, you say from your right. Can you give us any other indication as to what direction—

A. I am facing the north, your Honor.

The Court: I appreciate that. The sound came from your right, you say. From where you are it may have [fol. 203] come from your right and it would still be possible for it to come from above or below.

A. I don't know; I couldn't say.

The Court: In other words, the sound came stronger from the right?

A. Yes.

The Court: That is as far as you can go?

A. Yes, sir.

By Mr. Safier:

Q. Now, as I understand it, you heard the scream and you heard the thud, you thought it was unusual, and then you went back in and sat down to finish your cigar?

A. That is right; that is right.

Q. You made no investigation of any sort?

A. No, sir.

Mr. Safier: That is all.

Mr. Roll: Let me ask just one question, Mr. Heck, so we can get these questions right.

Redirect examination.

By Mr. Roll:

Q. As you got up—if I am incorrect here, your apartment—let myself be the front of the apartment and your—

self the rear of the apartment, and this indicates here an imaginary hallway between us, your apartment would be on my right and your left, is that correct, on this side, it would be on the south side——

[fol. 204] A. Well, I am not facing the——

The Court: I think the question is confusing, Mr. Roll.

Mr. Roll: All right.

Q. Well, when you got up was your right hand toward the rear of the apartment?

A. Yes, sir.

Mr. Roll: No further questions.

Mr. Safier: That is all.

Mr. Roll: That is all. May this witness now be excused?

The Court: Yes.

Mr. Safier: One further question, if I may, your Honor.

Recross examination:

By Mr. Safier:

Q. Mr. Heck, had you been in your apartment all of that day up to 3:30, or had you been out?

A. Prior to 3 o'clock I had visited in the lobby with Mrs. Massey, and about 3 I stepped to the corner drug store and got two books and went back upstairs, so I should say that probably about 10 or 15 minutes after 3 I had started to read the books.

Q. Well, you said some time prior to 3 o'clock you talked to Mrs. Massey. Can you tell me about how much prior to 3 o'clock it was you stopped to talk to her?

A. Only that it was after 12 o'clock, some time between 12 and 3 that I had talked to Mrs. Massey in the lobby.

[fol. 205] Q. Well, that is a period of about three hours, from 12 to 3. Can you fix it a little closer?

A. I could not be sure.

Q. Can you tell me what time elapsed from the time you talked to Mrs. Massey until you heard the scream?

A. No, I could not fix that.

Q. Just where was it you talked to Mrs. Massey, was it on the first floor?

A. On the first floor; in the lobby on the first floor.

Q. What was Mrs. Massey doing at that time?

A. She had come out of her apartment and sat down in the chair opposite me and talked with me.

Q. Could you say whether or not it was before or after 2 o'clock that you talked with Mrs. Massey?

A. I would fix the time somewhere in that period.

Q. Somewhere about 2 o'clock?

A. Somewhere between 12, say, and 2:30, somewhere in there.

Q. That is as close as you can fix it, is it?

A. I think so.

Q. Was Mrs. Massey doing anything with linens at that time?

A. No. She came out of the apartment, her apartment, and I was seated in my chair and she sat down opposite me.

Q. How long did you remain talking to her?

A. Not any longer than about 10 minutes, possibly.

[fol. 206] Q. Then you went out to the drug store?

A. Yes.

Q. And you were gone from the building about how long?

A. Well, not very long; it could not have been over 10 or 15 minutes.

Q. Then when you came back to the building did you go immediately to your apartment?

A. Yes.

Q. How long had you been back in your apartment before you heard the scream?

A. I don't think I had been reading very long, I cannot tell. I became interested in a book.

Q. Well, can you estimate the time you were back in the apartment before you heard the scream?

A. I could not say; I could not say.

Q. Would it be more than 10 or 15 minutes, or a matter of an hour?

A. I don't think it could have been a full hour.

Q. Somewhere between a half and an hour, would you say, Mr. Heck?

A. I would not be sure.

Q. Now, did you pass anybody else as you went out of your apartment on your way to the drug store?

A. I did not leave my apartment to go to the drug store; I left the lobby to go to the drug store.

Q. Well, was there anyone else in the lobby at that [fol. 207] time?

A. No.

Q. Was there anyone else in the lobby when you came back from the drugstore?

A. I saw no one when I came back.

Q. Was Mrs. Massey in the lobby when you came back?

A. I did not see Mrs. Massey in the lobby.

Mr. Safier: That is all.

Mr. Roll: That is all. May this witness now be excused?

The Court: You may be excused.

The Witness: Thank you.

(Witness excused.)

Mr. Roll: Mrs. Vandiver.

MABEL G. VANDIVER, called as a witness on behalf of the People, was duly sworn and testified as follows:

The Clerk: What is your name, please?

A. Mabel G. Vandiver.

Direct examination.

By Mr. Roll:

Q. Mrs. Vandiver, will you try to keep your voice up so we can hear you down here, please? Will you do that?

A. I will talk loud.

The Court: Suppose you use the microphone, Mrs. [fol. 208] Vandiver. It is much easier on your voice and you won't have to strain it.

The Witness: I talk loud, anyway.

The Court: You just talk into the microphone if we cannot hear you otherwise.

By Mr. Roll:

Q. Will you state your full name, please?

A. Mabel G. Vandiver.

Q. Where do you live, Mrs. Vandiver?

A. 744 Couth Catalina Street.

Q. About how long have you lived there?

A. It will be three years next May.

Q. In what apartment do you live?

A. 108.

Q. Is that on the first floor?

A. Yes, sir.

Q. Were you living in that apartment on the date of the 24th and the 25th of July, 1944?

A. I was.

Q. Is that a single apartment?

A. Yes, sir.

Q. You occupied it by yourself?

A. Yes, sir.

Q. Did you know a lady by the name of Stella Blauvelt during her lifetime?

A. Yes, sir.

Q. About how long had you known Stella Blauvelt?

[fol. 209] A. At least sixteen years, if not more.

Q. Did you see her during the time you were living at the apartment frequently or infrequently?

A. Very frequently.

Q. Now, with reference to the date of the 24th of July, 1944, which was on a Monday, when would you say it was the last time you saw her alive before that date?

A. On Saturday morning, the 22nd.

Q. On Saturday morning, the 22nd of July?

A. Yes, sir.

Q. Where did you see her on Saturday morning, the 22nd of July?

A. She came to my apartment on her way downtown.

Q. Did she spend any time there with you?

A. At that time?

Q. Yes, ma'am.

A. Oh, she stayed maybe 10 or 15 minutes. She said she was on her way downtown to meet Mrs. Watts and she—

[fol. 210] Q. Don't give us the conversation.

Mr. Safier: I move to strike out the conversation.

The Court: It is part of the res gestae of the transaction. It does not indicate anything particularly with reference to this case. If you want it stricken I will strike it.

Mr. Safier: Yes, your Honor.

The Court: It may be stricken.

By Mr. Roll:

Q. Was that the last occasion that you saw her alive?

A. Yes, sir.

Q. Now, during the weeks, Mrs. Vandiver, since the declaration of war had you and Mrs. Blauvelt been going to the Red Cross?

A. Yes, sir.

Q. What days of the week would you go?

A. Tuesdays and Fridays.

Q. Where did you go?

A. To the Southern California Gas Building.

Q. That is here in downtown Los Angeles?

A. Yes, on Flower Street.

Q. You say you would go together sometimes and sometimes go separately?

A. Well, we always started out separately but as a usual thing we would meet at the car line at Eighth and Catalina and go down together.

[fol. 211] Q. Now, did you, yourself, on Tuesday, the 25th of July, 1944, have occasion to go to the Red Cross?

A. Yes, sir.

Q. And about what time did you return home?

A. Well, generally about 4 o'clock.

Q. Did you see Stella Blauvelt there at the Red Cross that day, on Tuesday, the 25th?

A. No, I did not.

Q. Did you have occasion on the evening of the 25th of July, 1944, to go to Stella Blauvelt's apartment?

A. I did.

Q. And what number did you go to?

A. 410.

Q. Had you been there before?

A. Many times.

Q. About what time would you say it was that you went up there on the evening of the 25th of July, 1944?

A. I would say about 7:30 in the evening.

Q. What did you do, if anything, when you got to the door?

A. Well, I saw her morning "Times" laying at the door, and I thought that was very strange, because she never stayed away at night.

Mr. Safer: Now—

The Court: "Because" and so forth may be stricken.

By Mr. Roll:

[fol. 212] Q. Well, you saw her morning Times; is that right?

A. Yes.

Q. Where was the morning Times with reference to her door?

A. Right in front of the door.

Q. Then, after you saw that and thought what you thought, then what did you do?

A. I went down to Mrs. Massey.

Q. Well, before doing that did you rap on the door or do anything else?

A. I rapped on the door.

Q. You got no answer?

A. No answer.

Q. Then you went where?

A. Down to Mrs. Massey.

Q. Then, about how long elapsed—withdraw that. Did you then come back to 410?

A. I did.

Q. About how long elapsed between the time you were first there until you went down, got Mrs. Massey and came back?

A. Well, I would say half an hour; maybe not that long, because we talked a few minutes, you know.

Q. When you did get back with Mrs. Massey did you observe how she gained entrance to apartment 410?

A. Yes. She knocked on the door and then she used her [fol. 213] pass-key and opened the door.

Q. Were the lights on or off in the apartment at the time she opened the door?

A. They were off.

Q. Were they subsequently turned on by someone?

A. What?

Q. Were they turned on by someone?

A. Yes.

Q. Who turned them on?

A. Mrs. Massey. Just at the left of the door.

Q. Just at the left of the door?

A. Right inside, the ceiling lights.

Q. After the lights were turned on did you look into the room?

A. We did.

Q. Referring to People's Exhibits 8 and 9—here is a smaller photograph and here is an enlargement of the same thing. Now, with reference to what you see there, when you looked into the room, did you see what is depicted there in the picture?

A. I did.

Q. What was your particular attention attracted to, Mrs. Vandiver?

A. Well, naturally, was directed to Mrs. Blauvelt lying on the floor.

Q. Did you at that time notice anything with reference [fol. 214] to the condition of her feet? In other words, was she—withdraw that. Did you notice anything about her feet?

A. Yes, sir.

Q. What did you notice?

A. Well, I noticed that she didn't have any shoes or stockings on. They were out beyond her coat.

Q. Was there a coat over her?

A. Yes.

Q. Do you recall what type or color of coat that was?

A. Well, it was kind of a brown coat, light; kind of a sports coat.

Q. With reference to her head, what if anything did you observe with reference to her head? Could you see her face?

A. No, we couldn't.

Q. Was there something over it?

A. Two large pillows.

Q. Did you observe any light cord?

A. I did.

Q. When I refer to a light cord I mean one that is used on a lamp.

A. Yes.

Q. What did you observe with reference to the lamp cord or light cord?

A. Well, I noticed that her lamp usually sat behind her chair, and behind her end table, and I noticed the lamp was out in front of the table and the cord across the floor under her.

[fol. 215] Q. Did you then go into the room?

A. I did not.

Q. In so far as Mrs. Massey is concerned, I take it, she went in there far enough to turn the light on?

A. Evidently she did.

Q. Now, did you make any other observation there in the room at that time?

A. Well, I noticed her hat on the floor, and I noticed her shoes on the floor, and I noticed her pocketbook lying on a chair right at the door.

Q. You noticed her shoes on the floor?

A. Yes, sir.

Q. Her hat, and her pocketbook lying on a chair?

A. Yes.

Mr. Roll: May, I have the next exhibit number, your Honor?

The Court: The next is 10.

Mr. Roll: I would like to ask that the smaller of these two photographs here, which depicts the chair, be marked People's Exhibit 10 for identification, and an enlargement of the same view marked People's Exhibit 11 for identification.

The Court: They may be so marked.

By Mr. Roll:

Q. I am going to show you these two photographs, People's Exhibits 10 and 11, one being an enlargement of the other; does that fairly depict some of the articles [fol. 216] which you have described, namely, the purse and the shoes at the time you saw them?

A. Yes—well, the shoes—it seemed to me—of course, I was excited—it seemed to me the pocketbook—I didn't notice those things on there. I just noticed the pocketbook lying on the chair.

Mr. Safier: I did not hear that answer.

The Court: Read the answer, Mr. Reporter.

(Answer read.)

The Court: You mean by that, Mrs. Vandiver, you did not notice the other things on the chair, in the picture; you didn't notice them at that time?

A. I don't remember seeing the other things, only the pocketbook.

Mr. Roll: I think she means the reverse of that.

Q. There are other things shown in the photograph you didn't notice; is that what you mean?

A. That is what I mean.

Q. You mentioned her hat lying on the floor.

Mr. Roll: I have here a photograph that I will ask to be marked People's Exhibit—

The Court: 12.

Mr. Roll: —12 for identification.

Q. Mrs. Vandiver, is that a fair representation of the position of the hat—

A. Yes.

[fol. 217] Q. —there on the floor—

A. Yes.

Q. —with reference to the body?

A. Yes.

Q. Did you at that time notice anything with reference to any beads or not?

A. No, I didn't see my beads.

Q. I take it, after that you left; is that correct?

A. Yes.

Q. You left after that?

A. Yes.

Q. Did you go back into the apartment any more at all?

A. Into my apartment?

Q. No, into the one that had been occupied by Mrs. Blauvelt, 410?

A. No, never was in there any more.

Q. Now, Mrs. Vandiver, with reference to Stella Blauvelt, have you seen her wearing some diamond rings?

A. I have.

Q. More than once?

A. All the time.

Q. Do you recall any occasion when you saw her when she was not wearing them?

A. No.

Q. Can you describe those rings to the members of the jury and the court?

[fol. 218] A. Well, I know she wore a plain, old-fashioned gold wedding ring, a solitaire, which was her engagement ring, and then a larger ring that had a diamond and several small ones around it, kind of a high setting in platinum.

Q. Now, directing your attention again to this photograph here, which you previously identified, particularly the large one, People's Exhibit No. 8, which depicts the body of Stella Blauvelt there on the floor, I notice the

picture shows the left hand. Did you pay any attention to that left hand, for the purpose of seeing whether or not there was anything on the hand with reference to jewelry, or a watch, or anything of that character?

A. I saw her watch the first thing.

Q. What would you say, if anything, about the rings? Did you pay enough attention to see whether there were or were not rings?

A. No, I didn't see any; because her hand was turned—turned upward.

Mr. Roll: You may cross examine.

Cross-examination.

By Mr. Safer:

Q. Mrs. Vandiver, what is the number of the apartment that you occupied on July 24th?

A. 108.

Q. And that is on the first floor, is it not?

A. It is.

[fol. 219] Q. Now, will you tell me again when was the last occasion upon which you saw Mrs. Blauvelt alive?

A. The Saturday morning before, the 22nd.

Q. What time of day did you see her at that time?

A. Well, I would say about 10; between 10 and 11.

Q. In the morning?

A. Yes.

Q. What was the occasion of your seeing her at that time?

A. Well, I had not seen her for a day or two as I had had company from Long Beach overnight, and she knew these people and she came up to ask me if one of them had gone home, and I told her yes, and she said, "Well, what kind of a time did you [redacted] and asked me all about it."

Q. Did you have quite a [redacted] visit at that time?

A. Oh, about 10 or 15 minutes; I don't know.

Q. Then Mrs. Blauvelt left, did she?

A. Yes.

Q. And that was the last time you saw her alive?

A. Yes.

Q. Now, how long did you say you had known Mrs. Blauvelt?

A. At least sixteen years.

[fol. 220] Q. How frequently had you seen her in the year 1944 up until the time of her death?

A. Well, it was usually three or four times a week.

Q. Now, on every occasion upon which you saw her had she her rings on?

A. Yes, sir.

Q. Which hand did she wear the rings on?

A. On her left hand.

Q. How many rings were there?

A. Three.

Q. Did she wear them all on the same finger or different fingers?

A. She did.

Q. What?

A. What did you say?

Q. She did what?

A. She wore them all on the same finger. We often commented upon it.

Q. She wore them all on the same finger?

A. Yes.

Q. I believe you testified that on Tuesdays and Fridays you and Mrs. Blauvelt always went to the Red Cross?

A. We did.

Q. Now, had you been in the habit of going there with her or meeting her at the Red Cross?

A. Well, as I said, we never left the apartment together. [fol. 221] Q. You never left the apartment together?

A. No. She came from the fourth floor and I came from the first and we just went over and, as a usual thing, we met at the street car at Eighth and Catalina and took the same car down.

Q. You never waited for her on the first floor until she came by your apartment?

A. No, I did not. She usually was ahead of me.

Q. Now, you did go to the Red Cross yourself on Tuesday, July 25th, did you not?

A. I did.

Q. What time did you return home from the Red Cross?

A. Well, I usually got home about 4 o'clock.

Q. Did you get home at 4 o'clock on that day?

A. Yes. The Red Cross was dismissed at 3:30 and we took the car and came right home.

Q. What time was it that you went up to Mrs. Blauvelt's apartment?

A. I would say about 7:30 Tuesday evening.

Q. When you got to Mrs. Blauvelt's apartment you saw the newspaper in front of the door?

A. I did.

Q. Did you pick up the newspaper or did you leave it there?

A. I did not.

[fol. 222] Q. You did not what?

A. I did not pick it up.

Q. Did you knock at the door at that time?

A. I did.

Q. Did you always try the door to see whether or not it was locked?

A. No, I did not.

Q. You did not try it?

A. I did not hear her radio going, and that is another thing.

Q. Did you see underneath the door whether any lights were burning?

A. No, I didn't see any light.

Q. Then you went down to Mrs. Massey's apartment, is that true?

A. I did.

Q. And you and Mrs. Massey returned to apartment 410 together?

A. We did.

Q. Was the newspaper still in front of the door?

A. It was.

Q. Did either you or Mrs. Massey pick up the paper?

A. We did not.

Q. What did you do when you got back to apartment 410 with Mrs. Massey?

A. Well, I stood at the door in back of her and she [fol. 223] knocked on the door, and no answer, and she put the passkey in and opened the door.

Q. Now, just a minute. Before she put the passkey in and opened the door did she try the door at all to determine whether it was locked or unlocked?

A. No, I don't think so.

Q. When Mrs. Massey opened the door did she open it all the way at first or did she open it just a little bit? How was that?

A. Oh, she just opened it part way and we both naturally looked to see if the bed was down, which it wasn't.

Q. Was it dark or light inside of the apartment when you opened the door?

A. Well, it was dusk with the curtains down.

Q. Were there any lights on in the apartment?

A. No.

Q. Then what was the next thing that happened?

A. What?

Q. What was the next thing that you or Mrs. Massey did?

A. She turned on the wall lights right at the door.

Q. Well, did Mrs. Massey walk into the apartment?

A. She might have stepped just inside of the door to turn the lights.

Q. Did you enter the apartment at all?

A. I did not.

Q. You stayed out in the hall?

[fol. 224] A. Yes.

Q. After the time that Mrs. Massey entered the apartment and put on the light, was the door wide open at that time, or just slightly ajar?

A. Well, you see that chair sat right by the door and it went as far back as the chair, I would say halfway open.

Q. How long did you and Mrs. Massey remain at apartment 410?

A. I would say not more than two minutes. I don't have any idea of the exact time.

Q. Now, did Mrs. Massey at any time go further into the apartment than one or two steps?

A. I don't remember.

Q. But she did go into the room?

A. Well, as I said, she may have stepped just inside to turn on the light.

Q. However, she did turn on the light, didn't she?

A. She did.

Q. Now, when you observed Mrs. Blauvelt on the floor did you see her arms?

A. I did.

Q. Both of them?

A. One seemed to be extended up higher than the other.

Q. What do you mean by "standing up"?

A. Well, I mean higher than the one left, something like this (indicating).

[fol. 225] Q. Could you see both arms at all?

A. Yes.

Q. In what position was the right arm?

A. Extended up like this.

Q. Indicating a bend at the elbow?

A. Yes, I guess you would call it that.

Q. The palm extended toward the head?

A. Yes.

Q. I see. In what position was the left arm?

A. Practically straight out and the palm upturned.

Q. Both arms were visible and were not covered by the coat; is that correct?

A. That is right.

Q. Now, on which wrist did you see the wrist watch?

A. On her left wrist.

Q. On her left wrist. Was the left palm up or was the left palm down?

A. Up.

Q. Is it your testimony that she did not have her rings on at that time or that you did not observe whether or not she had her rings on?

A. I said I did not observe them.

Q. Now, you observed Mrs. Blauvelt's hat. Where did you see the hat?

A. On the floor to the right of her feet.

Q. How about the shoes?

[fol. 226] A. The shoes were over towards the chair.

Q. How about the stockings?

A. I didn't see any stockings.

Q. On the chair you observed her purse?

A. I did.

Q. But you did not observe any packages on the chair; is that correct?

A. No, I did not.

Q. Now, this lamp wire or lamp cord that you saw, where did you see that?

A. Extending from the lamp across the floor under her body.

Q. One end of it was attached to the lamp?

A. I don't remember that; I know the lamp was out in front of her chair and her end table. I just noticed the cord going from the lamp and it struck me because the lamp was out of place.

Q. I see. But are you able to tell us whether or not the lamp was attached to the cord, or, rather, that the cord was attached to the lamp?

A. No, I could not say that.

Q. You could not say whether it was or not?

A. To the lamp?

Q. Yes.

A. No, I could not say.

Q. You did not at any time see Mr. Adamson, the gentleman [fol. 227] man to my right?

A. No, I never have.

Q. At any time on the premises at 744 South Catalina Avenue?

A. No, sir.

Q. Now, had you seen Mrs. Blauvelt at any time on Monday, July 24th?

A. No.

Q. Were you home on July 24th?

A. I was.

Q. All day?

A. Practically.

Q. Had you seen any peddlers in the building on July 24th?

A. Any what?

Q. Peddlers.

A. I don't know whether you would call a solicitor for a newspaper a peddler or not, but one came to my door Tuesday night.

Q. Soliciting newspapers?

A. Los Angeles Examiner.

Q. You say on Tuesday night—

A. Yes.

Q. —or Monday night?

A. Tuesday.

Q. I am referring to Monday, the 24th.

[fol. 228] A. Oh, no, not Monday.

Q. You did not see anybody on Monday?

A. No.

Q. You did not see anybody soliciting for the newspaper on Monday?

A. No.

Q. Now, this boy that came to solicit for the papers, was he a stranger to you?

A. He was.

Q. And you now say that that was on Tuesday?

A. Yes.

Q. Now, you remember testifying in this matter at the preliminary hearing, do you not?

A. I do.

Q. I will ask you to read your testimony on page 14, lines 24 to 26. Will you just read that to yourself?

(Witness does as requested.)

Q. Have you read this, Mrs. Vandiver?

A. Yes.

Q. I will ask you if this question was asked you and if you gave this answer: "Q.—Do you have any peddlers call at the apartment? A—Well, Monday night I had a young boy soliciting for the paper, but that is all." Was that question asked of you and did you give that answer?

A. Evidently I did.

Q. I will also show you your testimony at the preliminary [fol. 229] hearing in this matter, on page 12, lines 8 to 19. Will you read that to yourself, please?

(Witness does as requested.)

Q. Have you read that?

A. Yes.

Q. I will ask you if these questions were asked you and if you made these answers: "Q—Did you see Mrs. Massey open the door?

"A. I did.

"Q. And did you observe anything inside the room?

"A. Yes.

"Q. What did you observe?

"A. I saw Mrs. Blauvelt lying there on her back, with two pillows over her face, covered with a coat, and arms extended, and no shoes or stockings on. Her shoes were in the middle of the floor and her hat on the floor, and I also saw her bag on the chair by the door.

"Q. Did you go into the room?

"A. No, we did not."

Were those questions asked you and did you give those answers?

A. What?

Q. Were those questions I have just read asked you at the preliminary, and did you give the answers that I have just read to the questions?

A. Yes.

[fol. 230] Q. Now, Mrs. Vandiver, when you saw the shoes by the chair,—will you state what that white matter is underneath the shoes?

A. I don't know.

Q. Did you see anything underneath the shoes?

A. No, not at that time I didn't.

Q. Well, the white matter, as it now appears in this picture, as being underneath the shoes, that wasn't there at the time you saw the shoes?

A. No,—when we opened the door I saw a piece of paper about—lying down there by the table—by the chair.

Q. Well, my question—

A. The shoes weren't here.

Q. As I understand it, when you opened the door the shoes were not in the position in which they appear on this picture?

A. I couldn't say that. I didn't notice in which position they were, because I was too nervous. I just noticed the shoes there.

Q. Did you notice them by the chair?

A. Well, close by.

Q. Were they as they appear to be in this picture?

Mr. Roll There is a larger one also, Mr. Safier.

A. Yes, I would say so.

By Mr. Safier:

Q. Well, did you see anything underneath the shoes, between the shoes and the carpet?

[fol. 231] A. No, I didn't. We stood over here. You see, I couldn't see them. I couldn't observe everything in the room.

Q. I will ask you this question: Do you see in this picture, referring to People's Exhibit for identification 11—there is something white that appears to be underneath the shoes, is there not?

A. Yes, in the picture.

Q. I will ask you at the time whether there was anything—any white matter underneath the shoes?

A. I didn't see any.

Q. You didn't see any?

A. No. I would be—they would be this way from me, anyway; I wouldn't know.

Mr. Roll: What was that answer?

(Answer read.)

By Mr. Safier:

Q. Well, you are unable to say at this time, then, whether this white material that now appears in this picture as being underneath the shoes—you are unable to say whether that white material was there at the time you looked at the shoes?

A. I would say that, yes, I didn't see it.

Q. You didn't see it?

A. No.

Q. Would you say it wasn't there?

A. No, I wouldn't say that because I was on the other [fol. 232] side of the room. I wouldn't—I couldn't see it if it was there.

Q. There might have been a pair of stockings by the shoes, underneath the shoes?

A. I don't know. I was away over here (indicating on photograph).

Q. How far was this chair from the door to the apartment through which you made these observations?

A. I don't know. Just right as you went in the door, three or four feet, maybe; I don't know.

Q. From the place where you were standing at the door, looking into the room, how far away from this chair would you judge you were?

A. Well, about as far as—I don't know; about 3 feet, I guess.

Q. About 3 feet?

A. Yes.

Q. And the light was on, wasn't it?

A. Not when we opened the door, no.

Q. Well, it was turned on at some time while you were standing there, was it not?

A. Yes.

Q. Now, can you state whether or not the parcels—

The Court: Just a minute. We have run—I was in hopes we could finish, but we have run away past our recess time. We will take our morning recess at this time. The jury

[fol. 233] keep in mind the admonition not to talk about the case or form or express any opinion. Take our morning recess at this time.

(Recess.)

Mr. Safier: May I have the last question and answer read by the reporter?

(Record read.)

Mr. Safier: Strike that.

Q. Can you state, Mrs. Vandiver, whether or not the parcels that appear in the picture, Exhibit 11 for identification, were on the chair at the time you observed it on July 25th?

A. I said I do not remember that.

Q. You do not remember that?

A. I just remember seeing the bag.

Q. Now, how many cushions did you see on the face of Mrs. Blauvelt when you looked in the apartment, one or two?

A. Two.

Q. Is there a davenport or divan in the living room?

A. There is.

Q. And did you see any cushions missing from the divan?

A. No, I did not.

Q. Did you look at the divan?

A. Well, I guess I glanced around the room, not to that especially.

Q. Now, there is just one part of your testimony at the [fol. 234] preliminary hearing, Mrs. Vandiver, that I forgot to ask you about, and I will be through: Will you start again at page 14, line 24, and read over to page 15 at line 21?

A. 24 to 21?

Q. Yes (handing transcript to the witness). You have read that to yourself now?

A. Yes, sir.

Q. I will ask you if these questions were asked of you and if you gave these answers: "Q. Do you have any peddlers call at the apartment?

"A. On Monday night I had a young boy soliciting for the paper but that is all.

"Q. Soliciting for the newspaper?

"A. Yes, just for new customers.

"Q. What paper was that?

"A. The Examiner.

"Q. The Examiner?

"A. Yes.

"Q. Do you subscribe to any papers?

"A. Yes.

"Q. What paper do you subscribe to?

"A. To the Daily News.

"Q. And did this boy give his name to you?

"A. No, he did not.

"Q. Was he a white boy or colored boy?

"A. He was a white boy.

[fol. 235] "Q. What time did he come to you on Monday night, approximately?

"A. Well, I would say along around 7 or 7:30, something like that.

"Q. Some time after dinner?

"A. Well, I was just getting my dinner. I was late with my dinner."

Were those questions asked and did you give those answers at that time?

A. I did, yes, sir.

Q. Now, did you see any other stranger in or around the building at 744 South Catalina Street on July 24th or July 25th of this year?

A. No, I did not.

Q. Did you at any time, either on July 24th or July 25th of this year, hear any unusual sounds?

A. No, I did not.

Q. In or about the building?

A. No.

Q. At 744 South Catalina Street?

A. No, sir.

Mr. Safier: That is all.

Redirect examination.

By Mr. Roll:

Q. Mrs. Blauvelt, on cross examination—

The Court: Mr. Roll,—

[fol. 236] Mr. Roll: I am sorry, your Honor. I was going to ask a question about her.

Q. Mrs. Vandiver, on cross examination you were asked by counsel with reference to some peddlers coming in the building, and my recollection is that you testified a newspaper boy came on Tuesday night; counsel has read from a transcript of the testimony you gave at the preliminary hearing, which indicates you there testified the boy came on Monday night. What is your best recollection now?

A. It was Monday night. I made a mistake.

Q. You were mistaken?

A. The reason I said that was because I was hurrying to get my dinner to go up to her house.

Q. It was Monday night you saw the boy?

A. It was Monday night I saw the boy. I was wrong.

Mr. Roll: That is all.

Mr. Safier: No further questions.

(Witness excused.)

Mr. Roll: Mr. Pinker.

[fol. 237] RAY H. PINKER, called as a witness on behalf of the people, was duly sworn and testified as follows:

The Clerk: State your name, please.

A. Ray H. Pinker.

Mr. Roll: I wonder, if the court please, if—they have not been introduced. I would like to offer in evidence these photographs here, People's Exhibits 8, 9, 10, 11 and 12.

The Court: They will be marked in evidence.

Mr. Roll: Would it be possible at this time—some of this testimony that Mr. Pinker will give will be concerning some objects in those pictures—would it be possible to show them to the jury before we start?

The Court: Yes. I was just wondering about 5 and 6 also. No, those are not photographs.

[fol. 238] Mr. Safier: May the record show an objection, your Honor, to the reception in evidence of the pictures on the ground no proper foundation has been laid?

The Court: The objection will be overruled.

(Photographs above referred to examined by the jurors.)

Direct examination.

By Mr. Roll:

Q. Your full name is Ray H. Pinker?

A. Yes.

Q. What is your business or occupation, Mr. Pinker?

A. Technical Director of the Scientific Crime Investigation Laboratory, Los Angeles Police Department.

Q. Were you so engaged in that particular occupation on the date of the 25th of July, 1944?

A. I was.

Q. Did you have occasion on that date to go to an address located on South Catalina Street?

A. I did.

Q. An apartment house there?

A. I did. An apartment house, I believe, in the 700 block on South Catalina.

Q. And did you go to apartment 410?

A. I did.

Q. About what time did you arrive there, Mr. Pinker?

A. To the best of my recollection, it was in the early part of the evening.

[fol. 239] Q. Were there some officers there at the time?

A. There were.

Q. Now, I am going to show you here three photographs—

The Court: May I just ask one question: What date was this?

Mr. Roll: The 25th, your Honor.

Q. That is the correct date, the 25th of July?

A. Yes, sir, that is my recollection.

Q. I am going to show you here the three photographs which have just been exhibited to the jury, People's Exhibit No. 11, People's Exhibit No. 8 and People's Exhibit No. 12 and ask you to look at those photographs and state to the court and to the members of the jury whether these photographs fairly depict the scene that you saw when you arrived there (handing photographs to witness)?

A. They do. They are true photographic representations of the various effects in the room of apartment 410.

Q. Now, Mr. Pinker, were you there when the body of Stella Blauvelt was removed?

A. I was, yes.

Q. And the body was removed by someone from the Coroner's office?

A. Yes, it was first rolled over and then removed by the Coroner's deputies.

Q. You were right there at the time?

A. I was present, yes.

[fol. 240] Mr. Roll: I have here a piece of silk stocking, if the court please, which I will ask be marked People's Exhibit 13 for identification.

The Court: People's 13.

By Mr. Roll:

Q. Directing your attention to People's Exhibit 13 for identification, Mr. Pinker, I will ask you to examine that and state whether or not you have seen that before?

A. I have.

Q. When and where did you first see that?

A. I first saw this on the evening of the 25th day of July, 1944, at the time the Coroner's deputies rolled the body of Mrs. Blauvelt over this foot, torn foot of a silken stocking was underneath the body lying on the floor.

Q. Now, directing your attention to—I have here a handkerchief, if the court please—

The Court: 14.

Mr. Roll: 14, apparently green and white, with little green stripes in it.

Q. Directing your attention to People's Exhibit 14, Mr. Pinker, I will ask you to examine that and state whether or not you have seen that before?

A. I have.

Q. When and where did you first see this?

A. I first saw this on the evening of the 25th day of July, 1944, in apartment 410. It was lying on a large over-[fol. 241] stuffed chair which is illustrated in Exhibit 11. This handkerchief can be seen lying directly behind an open woman's purse.

Q. Will you be kind enough to step down with your pencil so the jury can see what you refer to?

A. (Indicating to jurors:) With my pencil I am pointing to this handkerchief as shown in the photograph.

Mr. Roll: I now offer into evidence, if the court please, People's Exhibit 13, the half silk stocking and the handkerchief which have been identified.

The Court: So marked.

By Mr Roll:

Q. Now, directing your attention, Mr. Pinker, to the orange colored handkerchief, or brown, anyway, I will ask it be marked People's Exhibit 15 for identification. I will ask you to examine that and state whether or not you have seen that before?

A. I have.

Q. Where did you first see that?

A. I first saw this in a drawer in a dressing alcove in apartment 410. I found upon my examination of the bloody handkerchief—

Q. People's 13?

A. People's 13, the name "Carey" on it. I then searched through dresser drawers and discovered this other handkerchief also with the name "Carey" on it, so I brought it with me as a sample of the type of handkerchief present in [fol. 242] that apartment.

Mr. Safer: I move to strike the "bloody", your Honor. There isn't any evidence that there is blood on the handkerchief.

The Court: Well, we will strike that reference out as to Exhibit 14 for the time being.

Mr. Roll: With reference to People's Exhibit 15 I now offer that into evidence, if the court please, that is the other handkerchief here.

The Court: It may be so marked.

By Mr. Roll:

Q. Now, Mr. Pinker, with reference to the substance which appears there on People's Exhibit No. 13, that is the handkerchief—

The Court: 14.

Mr. Roll: 14, your Honor? That is correct, 14, the handkerchief, the green and white one:

Q. Are you a forensic chemist?

A. Yes, I am.

[fol. 243] Q. Graduate of the University of Southern California?

A. I am.

Q. Engaged in that profession for some period of time; is that correct?

A. For the past seventeen years.

Q. You have made examinations of blood, have you?

A. On numerous occasions.

Q. From your observation of that handkerchief there at the scene, can you state to the court and the members of the jury as to what that substance appears to be?

A. It appeared—

Mr. Safer: Just a minute. I object to that as no proper foundation laid, that he made any examination.

The Court: Well, as far as that is concerned, any person could state what something appears to be. That is opinion evidence. Did you make any further examination other than a visual examination, Mr. Pinker?

A. No, I did not, your Honor. I did not make any chemical or microscopic tests.

The Court: I will sustain the objection, because as far as appearance is concerned, the jury is as well able to observe its appearance as Mr. Pinker. In fact, under *People v. Manoogian*, they have held testimony of appearance is admissible even by a lay witness. But I do not think it is necessary in this case.

[fol. 244] By Mr. Roll:

Q. I have here what appears to be—it looks like a napkin, which I will ask to be marked People's Exhibit—

The Court: 16.

Mr. Roll: —16 for identification.

Q. I will ask you to examine this napkin and state whether or not you have seen it before.

A. I have.

Q. Where did you first see it?

A. I saw this napkin on the same occasion at the same place.

Q. Where was it, please?

A. I found it lying on the floor underneath a pair of shoes.

Q. Is this the point here (indicating on a photograph)?

A. Yes, it is, illustrated in People's Exhibit 11.

Mr. Roll: I will just point that out quickly to the jury.
(Photograph exhibited to the jury by Mr. Roll.)

Mr. Roll: You may cross-examine.

Cross-examination.

By Mr. Safier:

Q. Mr. Pinker, you first went to apartment 410 at 744 South Catalina Street on the evening of July 25, 1944?

A. Yes, it was on July 25th, and my best recollection is it was in the evening.

Q. About what time in the evening was it?

[fol. 245] A. It was, as I recall, some time shortly after the dinner hour.

Q. Who went with you, if anyone?

A. I went alone.

Q. You went alone. How did you gain entrance to the apartment?

A. The apartment was open. There were homicide detectives from Central Homicide Bureau there, there were detectives from the Wilshire Detective Bureau there, Robert Putoff, Los Angeles Police photographer, was there, and the fingerprint expert, I believe Mr. Larbaig, in this instance was present there.

Q. All of those persons you have just named were present in the apartment when you arrived?

A. Yes, sir.

Q. Now, when you arrived was the body still on the floor in the position in which it appears on Exhibit 8?

A. Yes, it was.

Q. Was the pillow still on the face?

A. Yes. There were two pillows; there was a pillow and a seat cover from the davenport over the head of the body.

Q. Was the coat still on the body?

A. Yes, the coat was over the body. The view that I first had of this scene was just as it is shown in these photographs. The photographs were in the process of being taken at the time that I arrived.

[fol. 246] Q. Now, tell me again where you found the orange-colored handkerchief.

A. The orange-colored handkerchief I found in a drawer in a dressing alcove halfway between the kitchen and the living room.

Q. I see. Where did you find the white one with the green stripe?

A. The white one with the green stripe and brown stains I found on a large chair, the chair that is illustrated in People's Exhibit 11.

Q. Where did you find the napkin?

A. The napkin I found underneath the shoes which were lying in front of this large chair.

Q. How far from the chair were the shoes?

A. Well, it was just as illustrated in People's Exhibit 11.

Q. How far would you judge it to be when you looked at it?

A. I can only refresh my recollection by studying the photograph. I would estimate the shoes were within a foot of this chair.

Q. And a part of a silk stocking you found underneath the body?

A. Yes, that was on the floor lying underneath the body. It was not apparent until the Coroner's deputies began removing the body. I made search of the apartment for [fol. 247] additional parts of torn stockings and found none.

Q. Did you find any other stockings at all?

A. Yes, there were a number of stockings hanging up, apparently drying, in the kitchen. There were also stockings in drawers in the dressing alcove.

Mr. Safer: That is all.

Mr. Roll: That is all.

The Witness: May I be excused, your Honor?

The Court: Yes, you may be excused.

(Witness excused.)

ROBERT FRICK, called as a witness on behalf of the People, was duly sworn and testified as follows:

The Clerk: State your name, please.

A. Robert Frick.

Direct examination.

By Mr. Roll:

Q. Your full name is Robert Frick, is that true?

A. Robert Frick.

Q. Where do you live, Mr. Frick?

A. 744 South Catalina.

Q. About how long, sir, have you lived there?

A. A little over five years.

Q. Does your wife live there also?

[fol. 248] A. Yes.

Q. Are you employed there?

A. Yes, sir.

Q. How long have you been employed there?

A. A little over five years.

Q. Generally, what are your duties there, Mr. Frick?

A. Well, I take care of all the cleaning and repair work.

Q. Directing your attention to the apartment known as apartment 410 there, at that address, up on the fourth floor, the one formerly occupied by Mrs. Blauvelt, you are familiar with that apartment, are you?

A. Yes, sir.

Q. Are you familiar with what we might call the garbage disposal unit?

A. Yes, sir.

Q. That is illustrated here, sir, by this "Garbage Compartment" that you observe on the drawing between "D-1" and "D-2" there?

A. Yes, sir.

Q. It is also illustrated by these pictures here on People's Exhibit No. 2, the side view?

A. Yes.

Q. Now, with reference to that garbage disposal unit, I am going to ask you some questions, Mr. Frick. How tall are you, sir?

A. Pardon?

[fol. 249] Q. What is your height? How tall are you?

A. 5 foot 7½.

Q. What is your weight?

A. 130.

Q. Do you want to step down here, Mr. Frick, right alongside of where the defendant is seated?

A. Yes.

(Witness leaves witness stand.)

Mr. Roll: Right over here, if you will.

(Witness stands near defendant.)

Mr. Roll: I will ask if the defendant might stand, please.

The Court: The defendant will stand for the purpose of identification.

(Defendant stands alongside of the witness.)

Mr. Roll: That is fine. You can come back, Mr. Frick.

(Witness thereupon resumes the witness stand.)

Q. Now, did you have occasion, Mr. Frick, some time after the date of the 25th of July, 1944, to yourself try and—not try, but crawl through that garbage disposal unit, from "D-1" to "D-2"?

A. Yes, sir.

[fol. 250] Mr. Safer: Objected to as irrelevant, incompetent and immaterial and has no bearing upon any of the issues in this case.

The Court: Overruled.

By Mr. Roll:

Q. Just tell us what you did, did you get through or did you get stuck?

A. No, sir, there was plenty of room.

Q. You did get through?

A. Yes, sir.

Q. About when did you do that, do you know?

A. Oh, about six weeks ago.

Q. About six weeks ago. Now, Mr. Frick, with reference to the janitor service there, cleaning of the apartments, during the month of July when were you cleaning the apartments up on the fourth floor, particularly apartment 410?

A. Mrs. Blaauvelt's apartment had been on Wednesday.

Q. On Wednesday?

A. Yes.

Q. How often, sir?

A. Every other Wednesday.

Q. That would be every two weeks?

A. Every two weeks.

Q. And with reference now to the date of the 25th of July, which was on a Tuesday, when would have been the next day that you cleaned the apartment?

A. That would have been on the 26th, the day after.

[fol. 251] Q. And you had previously cleaned the apartment two weeks before?

A. Yes, sir.

Q. With reference to this garbage disposal unit on the inside there, Mr. Frick, on the kitchen side in apartment 410, there was a door which is depicted in this diagram as view 1 of People's Exhibit 2; is that correct?

A. Yes, sir.

Q. Now, with reference, sir, to the—I have here a photograph which I will ask be marked for identification at this time.

The Court: 17 for identification.

Mr. Roll: 17.

Q. I am going to ask you to look at People's Exhibit 17, Mr. Frick, merely sir, at the door there, which is shown in the back of the picture?

A. That is a door leading to the hall.

Q. Now I am going to ask you, sir, with reference to the dates—the 24th and 25th of July in apartment 410, with reference to the type of lock, that is a door knob and anything else with reference to the door leading from 410 out into the hall: Can you explain what that was?

A. Well, there is just a knob lock there, that is a regular door lock and there is a chain lock on the inside.

Q. But with reference to when you want to go out that door if you are inside of the apartment you do not have to [fol. 252] insert any key, do you?

A. That is always open, the lock is always open from the inside.

Q. And from the outside—

A. It is locked.

Q. Now, is there some method, if you want to, on the lock where you can take a plunger so that you cannot enter?

A. By pressing a button the bolts that is in the lock there, you push one back.

Q. And if you do that cannot come in from the outside without a key?

A. You can throw the lock off by doing that.

Q. And this chain lock that you mention is one that can only be put on from the inside?

A. Just a chain lock to leave the door extend open about 3 inches.

Q. Now, Mr. Frick, with reference to the collection of the garbage from the various units there in the apartment, who takes care of that, sir?

A. I do.

Q. And do you do that in the morning or evening?

A. In the morning.

Q. Now, directing your attention now, sir, to the date on which Mrs. Blauvelt's body was found, the morning of that date, the 25th day of July, 1944, did you on that morning have occasion to go up on the fourth floor and do [fol. 253] anything with reference to the garbage in apartment 410?

A. Yes, sir.

Q. What, if anything, did you do, sir?

A. Pardon?

Q. What did you do with reference to that?

A. Well, I found that the garbage tin was not in the place where Mrs. Blauvelt usually kept it.

Q. Where was it, sir?

A. It was in the corner, in the other corner, I would say, the southwest corner of the service board.

Q. About how large a garbage container was that, can you indicate with your hands how big a container it was?

A. Oh, the container is about 8 or I will say 9 inches, the container about 12 inches high.

Q. About 12 inches high and 8 or 9 inches across?

A. Yes.

Q. And in so far as the garbage itself was concerned, did you pull the can out that morning?

A. Yes, sir.

Q. Do you recall whether there was any garbage in there or whether there was not?

A. Yes, sir.

Q. Well, what was the situation?

A. There was nothing in it.

Q. Nothing there?

A. No, sir.

[fol. 254] Q. Now, in doing that, Mr. Frick, can you tell me when you reached in to get the garbage out, did you bend down to do it, or do you do it from a crouched position or get down on your hands and knees, or how do you do it?

A. Well, I would say a crouch.

Q. Now, did you look into the unit at the time or just reach in and get the can and pull it out?

A. I just pulled it out; I didn't look.

Q. You didn't pay any attention?

A. I didn't pay any attention only to where the tin was located.

Q. So you are unable to say anything with reference to the door there on the inside?

A. No, I don't know about that.

Q. You did not look for that at all?

A. No, sir, I did not look.

The Court: This may be a good place to break. We will take our noon recess at this time, and the jurors will keep in mind the admonition not to talk about the case or form or express any opinion. Take a recess until 1:45.

(Whereupon a recess was taken until 1:45 o'clock p. m. of the same day, Thursday, November 16, 1944.)

[fol. 255] Thursday, November 16, 1944; 1:45 o'clock P. M.

The Court: The record will show the jury, counsel and defendant present. You may proceed.

The Clerk: Mr. Frick, please.

ROBERT FRICK, recalled:

Mr. Roll: I have no more questions.

Cross-examination.

By Mr. Safier:

Q. Mr. Frick, which apartment do you occupy at 744 South Catalina Street?

A. 110.

Q. How long have you occupied apartment 110?

A. 110, how long?

Q. Yes?

A. A little over five years.

Q. Who else lives there with you?

A. My wife.

The Court: I do not see the materiality of that.

Mr. Safier: Very well. It is just a preliminary question.

Q. Now, Mr. Frick, When was it you made this experiment with the garbage disposal compartment.

A. About six weeks ago.

[fol. 256] Q. Do you remember the date?

A. No, I don't.

Q. At whose request did you make that experiment?

A. Pardon?

Q. At whose request did you make the experiment?

Mr. Roll: That assumes something not in evidence.

The Court: Sustained.

By Mr. Safier:

Q. Did you make that experiment at the request of somebody?

A. After the accident in there they installed a Yale lock.

Q. No, now, you can—

The Court: What the attorney wants to know, Mr. Frick, is did you try this all of—was it your own idea to try this or did someone tell you to try it?

A. No, I went in there to release this lock and the keys at the present time was not in the house.

The Court: Did anybody tell you to do it?

A. Yes.

The Court: Who did?

A. My wife.

The Court: That settles that.

By Mr. Safier:

Q. Did you only crawl through that compartment the one time, Mr. Frick?

A. Yes, sir.

Q. Just on the one occasion. Now, at the time that you [fol. 257] made that experiment and crawled through that garbage compartment, was the door represented by D-1 on this large drawing on?

A. Is that the inside?

Q. That is the hall side.

A. The hall side. Yes, sir, that door was on.

Q. Is there any lock on that door?

A. Just the latch.

Q. Just the latch. Now, at that time, the time that you made that experiment, was the door represented by D-2 on the large drawing, being the inside door on?

A. The kitchen, no, sir.

Q. That was off. Now, was there a shelf in that garbage compartment at the time you made that experiment?

A. Yes, sir.

Q. Did you crawl—you did crawl through there, didn't you?

A. Yes, sir.

Q. Did you crawl under or over the shelf?

A. Under.

Q. Under the shelf. Are there some pipes in there in that compartment?

A. No, sir.

Q. No pipes in that—

A. Just lined with tin.

Mr. Roll: I cannot hear you, Mr. Frick.
[fol. 258] The Court: Keep your voice up, Mr. Frick. It is pretty hard to hear you.

A. It is lined with tin.

By Mr. Safier:

Q. Now, is there a lock on the inside door there ordinarily?

A. Just the latch.

Q. Just the latch and the latch opens from the kitchen side?

A. Yes, sir.

Q. In other words, if the door, the kitchen side door of the garbage compartment is closed with a latch it can only be opened from the kitchen?

A. Yes, sir.

Q. Now, did you do the cleaning in the apartment, Mr. Frick?

A. Yes, sir.

Q. When prior to July 24th did you do any cleaning in apartment 410?

A. Well, that was just about two weeks before.

Q. And do you have an independent recollection of having cleaned in that apartment two weeks before July 24th or do you say that just because it was your custom to clean there every two weeks?

A. Well, that is because we clean every two weeks.

Q. Prior to the time you made the experiment by crawling through the garbage disposal compartment when had [fol. 259] you last been in apartment 410 for any reason?

A. As far as I remember the last time we cleaned in there.

Q. I see. Were you about the premises at 744 South Catalina Avenue all day on July 24th of this year?

A. Yes, sir.

Q. And on July 25th of this year?

A. The 23rd?

Q. The 25th?

A. The 25th. I was there all day.

Q. You were not away from the building at any time those two days?

A. No, sir.

Q. Now, did you at any time, either on July 24th or July 25th, hear any unusual noises or sounds?

A. Pardon?

Q. Did you on either of those two days hear any unusual noises or sounds about the building?

A. No, sir.

Q. Do you remember on what floor you were working either on the 24th or 25th of July?

A. On the fourth—the third and fourth.

Q. On the third and fourth?

A. On the third and fourth.

Q. Which day were you working on the third and fourth, was it on the 24th or 25th or on both days?

[fol. 260] A. Well, we work on both floors each day.

Q. You work on both floors each day?

A. Yes, sir.

Q. Do you remember what time of the day on the 24th you were on the fourth floor?

A. That was on a Tuesday, was it?

Q. Monday?

The Court: May I have just one moment, please?

A. I think we were there about 9 o'clock.

(Short interruption on other court business.)

[fol. 261] The Court: You may proceed.

Mr. Roll: What was that answer, please?

(Answer read.)

By Mr. Safier:

Q. Now, we are referring to Monday, July 24th. Can you tell me what time of day you were working on the fourth floor?

Mr. Roll: I object to that as having been asked and answered. He said about 9 o'clock.

The Court: You may answer it again.

A. About 9 o'clock.

By Mr. Safier:

Q. In the morning or in the evening?

A. Morning.

Q. How long did you stay on the fourth floor at that time?

A. Well, about 45 minutes, I think it was.

Q. Were you on the fourth floor at any other time on that date?

A. Yes.

Q. What time?

A. I don't remember.

Q. Was it in the morning or afternoon?

A. I think it was in the afternoon.

Q. The early part of the afternoon or the latter part of the afternoon?

A. I don't remember that.

Q. You did not hear any unusual noise at any time?

[fol. 262] A. Not any.

Q. Now, referring to Monday, July 24th, can you tell me what time of day you were working on the third floor?

A. No, I cannot remember that.

Q. Now, referring to July 25th, Tuesday, can you tell me what time of day you were working on the fourth floor?

A. Well, I would say around 11 o'clock.

Q. In the morning?

A. Morning.

Q. How long did you stay there at that time?

A. About 45 minutes.

Q. Was that the only time on Tuesday that you were on the fourth floor?

A. As far as I remember.

Q. How about the third floor? What time on Tuesday were you on the third floor?

A. Well, earlier in the morning.

Q. Now, referring to the lock on the door of apartment 410 prior to July 24th, when had you last made an examination or seen the lock on the door of that apartment?

A. I don't understand the question.

Q. I will reframe it. When did you last examine the lock on the door of apartment 410 prior to July 24?

A. Examine it? Well, I don't examine the locks without there is something wrong with them.

Q. Well, you do not know whether or not there was [fol. 263] anything the matter with the lock on July 24th?

A. Not that I know of.

Q. I beg your pardon?

A. Not that I know of.

Q. You do not know whether it was working or not, do you?

A. No, I don't.

Q. Now, I believe you testified the type of lock—strike that. Is the lock on that door a lock that is in the door handle itself?

A. No, it is not. It is in the door, in the frame, in the lock; you push a button—

Q. I am sorry. I did not hear you, Mr. Frick.

A. You push a button in on the lock itself. It is not one that has a snap on the lock, on the knob.

Q. It hasn't got a snap on the knob?

A. No.

Q. Well, is it a Yale lock?

A. Pardon?

Q. Is it a Yale lock?

A. No, it is not a Yale.

The Court: Is it a Schlage lock?

A. Well, it is a regular lock, mortised in the door.

The Court: You do not know the name of the particular manufacturer?

A. No, I do not.

By Mr. Safier:

Q. Is it a lock that is fastened on the inside of the door?
[fol. 264] A. No, it is set right into the door.

Q. It is set right into the door?

A. Yes.

Q. It has two little buttons on it?

A. It has two little buttons on it.

The Court: Right in the center of the lock?

A. Right in the center of the lock.

The Court: Most doors have these little buttons on the side edge of the door.

A. Yes, in the edge.

The Court: This one does not have those buttons, or does it?

A. It is right along the edge that closes to the frame.

The Court: You push one which releases the latch and the other one locks it?

A. Yes, the other one locks it.

By Mr. Safier:

Q. If you push one of those buttons the door can be opened from either side without a key, can it?

A. If you push one the door from the inside—the door from the inside can be opened at any time, but when you push—you can lock it on the outside or release the lock by one.

Q. Well, can you, by pushing one of those buttons, fix the door so it can be opened either from the inside or outside without a key?

[fol. 265] A. Yes, sir.

Q. If you push the other button it can be opened only from the inside but not from the outside; is that correct?

A. That is correct.

Q. And in addition to that there is a chain lock?

A. Yes, sir.

Q. I believe you testified that you took care of the collection of the garbage in the building?

A. Yes, sir.

Q. And do you do that every morning?

A. Yes, sir, all but Sundays and holidays.

Q. Did you collect the garbage from apartment 410 on the morning of July 24th?

A. That was on Tuesday morning? Yes, sir.

Q. That was on Monday, July 24th?

A. Monday morning.

Q. Monday morning, July 24th?

A. Both Monday and Tuesday.

Q. Did you collect it again on Tuesday?

A. Yes, sir.

Q. July 25th?

A. Yes, sir.

Q. And on Tuesday morning, July 25th, the garbage pail was in the garbage compartment, wasn't it?

A. Yes, sir.

Q. Now, you testified something about it being in a [fol. 266] certain portion of the garbage compartment. Which portion was it in on Tuesday morning?

A. It was, I would say, in the southwest corner.

Q. In the southwest corner of the garbage compartment?

A. Yes, in the far corner.

Q. Can you tell me in which part of the garbage compartment the garbage pail was on Monday morning, July 24th?

A. Well, it was right next to the outside door, as far as I remember.

Q. Did you also collect the garbage pail from apartment 408 on the morning of July 25th?

A. Yes, sir.

Q. In what portion of the garbage compartment was the pail in that apartment?

A. That was—it could be any place.

Q. It could be any place?

A. Yes.

Q. Do you remember where it was?

A. I don't remember.

Q. Can you tell me with reference to any other apartments in that building in what part of the garbage com-

partment the pail was setting on the morning of July 25th?

A. No, because there are too many people that do not have one place; certain people have one place where they always keep it, and other people don't.

Q. Well, referring to apartment 408, now, does the party [fol. 267] that lives in that apartment keep the garbage pail in any part of the garbage compartment?

A. They just put it in anywhere, as far as I remember.

Q. As a matter of fact, as to all of the tenants in the building, they just put their garbage pail anywhere in the garbage compartment, do they not?

Mr. Roll: I object to that as asked and answered.

A. Not all of them. Some of them have a regular place to keep them.

Mr. Roll: Withdraw it.

By Mr. Safer:

Q. Tell me which tenants of the building have a particular spot in the garbage compartment.

A. Well, Mrs. Blauvet had—

Q. Let me finish my question, please, Mr. Frick. Tell me which of the tenants of the building that had one particular section in that garbage compartment upon which they set their garbage.

A. I do not remember that, but I do remember Mrs. Blauvelt because she never had but very little garbage in her pail, and she always kept it next to the outside door without a lid on it.

Q. Were there any other tenants that had very little garbage in their pail?

A. Yes, there are some of them that did not have very much.

Q. Any other tenants that always kept the garbage pail [fol. 268] close to the outside door too?

A. Yes, there was.

Q. Who are they?

A. Well, I cannot tell you just who. I could take you out there and show you, if you would like to go out.

Q. Was Mrs. Blauvelt the owner of two garbage pails?

A. She had a garbage pail and a waste paper basket.

Q. Did you see the waste paper basket on the morning of July 25th?

A. The waste paper basket was not in that morning.

Q. It was not there that morning. Were there any other mornings that the waste paper basket was not there, too?

A. Well, there are certain mornings that she would have the waste paper basket in; not that morning.

Q. I see. Now, on the morning of Tuesday, July 25, 1944, when you collected the garbage of apartment 410, did you observe whether or not the inside door, that is the kitchen side door, of the garbage compartment was closed or open?

A. I did not notice that.

Q. Well, if it was open you could have seen right through it, could you not?

Mr. Roll: Just a moment. I object to that, if the court please, on the ground—

The Court: Purely speculative in view of the previous testimony in the record, which I think counsel has forgotten. [fol. 269] The witness testified he did not look in there.

Mr. Safier: Well, I think he testified he crouched, did you not?

The Court: Yes, but he also testified he did not look in there.

By Mr. Safier:

Q. Is it a fact that you did not look into the garbage compartment on that morning?

A. I just looked for the location of the garbage tin, that is all.

Q. You did look in the compartment to see the location of the tin, did you not?

A. Only in the service door.

Q. Did you have to reach into the garbage compartment to reach the garbage pail?

A. Yes, sir, you had to reach to get it.

Q. And as you reached in did you look into the compartment?

A. The service door is directly in front of you when the door leading to the kitchen—it would be on the left side as you were taking that out. I just look straight in there to see where the garbage tin was, not noticing whether the door was open or closed on the inside.

Q. Well, did you notice whether or not any light was coming from the kitchen into the garbage compartment?

A. No, sir, I did not.

Q. No, sir what, you did not notice or there was no [fol. 270] light?

A. I did not notice it.

Q. Did it appear to be dark in the garbage compartment at that time?

A. Well, she could have had her window shades down and the kitchen could have been dark.

Q. Wait a minute—

The Court: Do you remember whether it was dark when you looked in there, or not?

A. Yes, it was fairly dark.

By Mr. Safier:

Q. What do you mean by fairly dark?

A. Well, it was not clear.

Q. Was it as dark as—strike that. Would you say that it was dark in the same—would you say that the lighting in the garbage compartment on the morning of July 25th, when you reached for the pail, would you say that the darkness in the garbage compartment was about the same as it was on every other morning?

Mr. Roll: Just a minute, if he noticed. I have no objection to the question if he noticed.

The Court: You may answer. Did you notice any different conditions as to light or dark on that particular day?

A. Well, no, not at that particular time of the year there would not be a lot of difference only in case of the day being cloudy outside.

[fol. 271] By Mr. Safier:

Q. Did it appear to you to be about the same on July 25th as it was every other day during the preceding two weeks that you collected the garbage?

A. Well, I didn't notice that.

[fol. 272] Q. Well, did you notice any difference on the morning of July 25th as to the lighting or the darkness in the garbage compartment as compared with any other day during the preceding two weeks?

A. Well, I don't remember that.

Q. Can't you tell us, Mr. Frick, whether you noticed any difference at that time?

Mr. Roll: I object to that as asked and answered.

The Court: He just answered the question. I do not think it should be repeated. The objection is sustained as asked and answered.

Mr. Safier: I have no further questions.

Redirect examination.

By Mr. Roll:

Q. Mr. Frick, counsel asked you with reference to the locks. Did you have any complaint from any source around the 24th or 25th of July or, we will say, the 22nd about that lock being out of order?

A. No, sir.

Q. Did you have any complaint about that door there, the inside door which you marked on the diagram as D-2, anything being wrong with that?

A. Leading to the kitchen?

Q. Yes, sir.

A. No, sir.

Q. Did you have any complaint about that?

[fol. 273] A. No, sir.

Q. I believe you testified on cross examination that on the morning of the 25th when you went to reach in there to get the garbage can, what did you say about the lid?

A. Mrs. Blauvelt never kept the lid on the garbage can.

Q. Yes?

A. And that morning it was on.

Q. And that morning it was on?

A. On.

Mr. Roll: No further questions.

Recross-examination.

By Mr. Safier:

Q. Mr. Frick, do you mean to tell us during the five years that you collected garbage there, July 25th is the only morning that you ever found the lid on the garbage pail in Mrs. Blauvelt's apartment?

A. Mrs. Blauvelt did not live in that apartment five years.

Q. Well, do you mean to tell us, then, that as long as you

have been collecting the garbage at Mrs. Blauvelt's apartment, whenever she lived, that July 25th was the only time in all the time that you collected the garbage there, that you found the lid on the pail?

A. As far as I remember.

Q. I see, all right. Now, ordinarily when you collected the garbage from Mrs. Blauvelt's apartment the kitchen [fol. 274] door to the garbage compartment was closed, was it not?

A. I would not say that it was closed at all times.

Q. Well, was it closed most of the time?

A. Most of the time.

Q. How frequently during the past year would you say you found the kitchen side of the garbage compartment open?

A. I never counted it.

Q. But when you collected the garbage you could very easily tell ordinarily whether the kitchen side of the compartment was open or closed, could you not?

A. Well, no, you do not do that, you do not look in there to find out whether they are open or closed. When you are doing your work you are just carrying on your work. You do not bother about those other little details.

Q. Mr. Frick, if you did not look in there, then, how do you know it was closed most of the time but open some times?

A. Well, there are times you look at it and there are times you do not.

Q. I see. Sometimes you look at it and sometimes you don't?

A. Yes, sir.

Mr. Safier: That is all.

[fol. 275] Redirect examination.

By Mr. Roll:

Q. What time of the morning on the 24th or 25th would you pick up the garbage?

A. About 6:30.

Q. A. M.?

A. In the morning.

Q. And you told counsel on cross examination that some time in the morning, I believe on both the 24th and 25th,

you were up on the fourth floor, I think you said for about 45 minutes. Do you remember what you were doing?

A. I was cleaning apartments.

Q. You were on the inside cleaning some apartments?

A. Yes, sir.

Q. What do you use, a vacuum cleaner to clean?

A. Yes, sir.

Q. What kind?

A. A Hoover.

Q. An electric one?

A. Yes, sir.

Q. One that works off of one of these plugs?

A. Pardon?

Q. Works off an electric plug?

A. Yes, sir.

Q. Is it a small Hoover or a big one they use in apartment houses?

[Vol. 276] A. Well, it is quite large.

Q. Makes a little noise?

A. It is a regular—yes, sir.

Mr. Roll: That is all.

Recross-examination:

By Mr. Safier:

Q. Which apartment were you cleaning on July 24th on the fourth floor?

A. Well, I think it was 409.

Q. 409?

A. Yes, sir.

Q. That is the apartment directly opposite from 410?

A. Across the hall, yes, sir.

Q. Did you clean any other apartment on the fourth floor on July 24th?

A. Yes, sir.

Q. On the fourth floor?

A. Yes, sir.

Q. Which one?

A. 406, I think it was.

Q. Where is 406 located?

A. That is about the third apartment down on the south side of the building.

Q. You cleaned both of those apartments on the morning of July 24th, Monday?

A. I don't remember that.

[fol. 277] Q. Do you remember whether it was Monday or whether it was Tuesday?

A. It was Monday.

Q. It was Monday?

A. Monday, but I don't remember the time.

Q. You don't remember whether it was morning or afternoon?

A. No, sir, I don't, when I cleaned 406.

Q. Didn't you have one particular day for each floor for cleaning purposes?

A. Well, no, we work from one floor to the other, different days of the week.

Q. You don't take one floor on Mondays, another floor on Tuesdays, another floor on Wednesdays? Don't you work it that way?

A. No, sir; we only give them every two weeks service.

[fol. 278] Q. Do you remember what apartment you were cleaning on the fourth floor on Tuesday morning?

A. Tuesday morning? I don't remember that.

Q. You don't remember?

A. No.

Mr. Safer: That is all.

Mr. Roll: That is all. May this gentleman be excused?

The Court: He may be excused.

(Witness excused.)

Mr. Roll: Mr. Osmon.

KEN LEMAR OSMON, called as a witness on behalf of the People, was duly sworn and testified as follows:

The Clerk: State your name, please.

A. Ken Lemar Osmon.

Direct examination.

By Mr. Roll:

Q. What is your full name?

A. Ken Lemar Osmon.

Q. How do you spell your last name?

A. O-s-m-o-n.

Q. How old are you, Ken?

A. Fifteen, last September.

Q. Where do you live?

[fol. 279] A. 919 South New Hampshire.

Q. Do you go to school?

A. Yes, sir, I do.

Q. What school do you go to?

A. Loyola High School.

Q. That is located down on Venice Boulevard near Vermont?

A. Yes.

Q. During the summer months were you working?

A. Yes, I was working for Mr. Farmer, delivering papers.

Q. Were you soliciting papers too?

A. Yes, I was.

Q. What paper were you soliciting for, do you remember?

A. The Examiner.

Q. Did you have occasion to go into an apartment house down on South Catalina, No. 744?

A. Yes. In fact, I went through the whole two blocks on Catalina.

Q. Was that during the month of July, do you remember?

A. Yes.

Q. Do you remember being in the apartment house at 744 on any particular day?

A. No, I don't. I believe it was either Friday or Saturday. I wouldn't say for sure. I know I turned some orders in that night, and that would be the night that I solicited.

[fol. 280] Q. What you did was that when you went into this apartment you would go around and rap on the various doors?

A. Yes.

Q. And if someone answered you would talk to them; is that correct?

A. That is right.

Mr. Roll: Will you stand up, please?

(Lady in audience rises.)

Mr. Roll:

Q. Do you remember talking to this lady?

A. I couldn't say for sure. You see, I talk to so many people.

Mr. Roll: That is all.

The Court: Just one question, Ken. Can you give us any better idea than it was in July? Can you tell us about when in July it was?

A. Yes, it was, I believe—I know police officers came down and told me that I had been soliciting there and there had been a murder there.

Mr. Safer: Just a minute. I object to any hearsay evidence.

The Court: This is not hearsay. He is trying to fix the date by something. Some police officers came to you?

A. Yes. We read in the paper, of course, there had been a murder there, and I believe—in fact, I know I was either in there Friday or Saturday of the preceding week.

The Court: In other words, you were in there a few days [fol. 281] before you read the account in the paper; is that about the way it was?

A. I believe it was one or two days before.

The Court: One or two days before. You may cross examine.

Cross-examination.

By Mr. Safer:

Q. Your best recollection is that it was on Friday or Saturday that you went into the apartment at 744 South Catalina Street?

A. Yes.

Mr. Safer: That is all. No further questions.

Redirect examination.

By Mr. Roll:

Q. Now, just one thing more: Mr. Wiseman here and Mr. Brennan took you back there to the apartment house later on, didn't they?

A. Yes.

Q. For the purpose of refreshing your recollection, do you remember telling them that you thought it was on Monday night you were there?

Mr. Safier: Just a minute. I object to that as being—
The Court: Sustained.

Mr. Safier:—in the nature of impeachment.

The Witness: You see, it has been so long—

Mr. Safier: Just a moment.

[fol. 282] The Court: Objection sustained. You cannot answer the question, Ken.

Mr. Safier: The judge says you cannot answer it.

The Court: We have certain rules here the same as we have in basketball.

Mr. Roll: That is all. May this young man be excused?

The Court: Yes, he may be excused.

(Witness excused.)

JAMES R. FERGUSON, called as a witness on behalf of the People, was duly sworn and testified as follows:

The Clerk: State your name, please.

A. James R. Ferguson.

Direct examination.

By Mr. Roll:

Q. Will you state your full name, please?

A. James R. Ferguson.

Q. Mr. Ferguson, what is your business or occupation?

A. Police officer, City of Los Angeles, attached to the Scientific Investigation—

Q. How long have you been engaged as a police officer?

A. A little over four years.

Q. What division or detail are you attached to?

A. Scientific Investigation Bureau, latent fingerprints [fol. 283] section.

Q. Mr. Ferguson, how long have you been working in that department?

A. Approximately eighteen months.

Q. Were you working in that department on the date of the 25th of July, 1944?

A. I was.

Q. Did you have occasion to go to apartment No. 410 on that date?

A. I did.

Q. About what time of day did you go there, sir?

A. Approximately noon time.

The Court: Fix the apartment house and address.

By Mr. Roll:

Q. 744 South Catalina Street?

A. Yes.

Q. Were there some other officers there when you arrived?

A. Yes, there was.

[fol. 284] Q. Do you remember if Mr. Wiseman and Mr. Brennan were there?

A. I believe they were both there.

Q. Did you see Mr. Pinker there?

A. Yes, I did.

Q. As a part of the equipment that you take along with you when you go out on a call such as the call that you went on on this night, what type of equipment do you take with you?

A. I had a fingerprint camera, some brushes, some fingerprint powder and some Scotch tape.

Q. When you say fingerprint camera, can you tell us a little more about it, please?

A. Well, it is an Eastman fingerprint camera with a fixed focus; place it immediately over the fingerprints and turn it on; it is operated by batteries from the inside.

The Court: For the ladies to get a better idea, it is something like a shoe box, it is black, and you set it right on top of the fingerprints; is that right?

A. That is right.

By Mr. Roll:

Q. With reference to the brushes, will you tell us what kind of brushes?

A. I have camel's hair brushes.

Q. And you say some powder?

A. Yes.

Q. Now, will you tell us—I am not going into too many [fol. 285] details with reference to it at this time, as I expect to call some other witnesses—with reference to

when you start looking on a surface for prints, just how do you do it? Will you tell us that, please?

A. Well, you take your brush, dip it in the powder and rub the powder lightly over the surface that you are examining for fingerprints, and the powder adheres to the surface where the fingerprint is.

Q. That is, if you do get some prints there and desire to take a photograph of them, you take your camera and take a photograph?

A. Yes, that is right.

Q. The Scotch tape you mentioned, what do you use that for?

A. After photographing the print we lift the print from the surface, put it on a card and keep the card with the lifted print on it.

Mr. Roll: May I have the next exhibit number?

The Court: The next number is 18.

Mr. Roll: May this be marked People's Exhibit 18 for identification?

The Court: It may be so marked.

Mr. Roll: For the purpose of identifying it, it is a picture of a part of the kitchen of apartment 410.

Q. Directing your attention to this photograph, Mr. Ferguson, I will ask you to examine that photograph and [fol. 286] state whether or not that is a fair representation of the kitchen in apartment 410 at 744 South Catalina Street?

A. Yes, it is.

Q. Now, I notice in that photograph that there are some newspapers there on the floor. Were those papers there when you arrived?

A. No, I put those papers on the floor myself to keep the black powder from getting on the floor.

Q. I notice in the photograph, right in the forepart of the photograph, what appears to be a door. Where was that door there in the apartment when you first saw it?

A. Approximately the same place it is now in the photograph.

Q. By approximately the same place it is now in the photograph, I take it, you mean by that answer that it was in the kitchen part of apartment 410?

A. Yes, it was, near the sink.

Q. Near the sink?

A. Immediately in front of the sink.

Q. Lying up against the sink?

A. Yes.

Q. Directing your attention, Mr. Ferguson, to a door which at this time I ask to be marked People's Exhibit 19 for identification, I will ask you to look at that and state whether or not that is the same door that you have referred to in your testimony as having seen there in the kitchen on [fol. 287] the evening of the 25th of July, 1944, in apartment 410 at 744 South Catalina Street in the City of Los Angeles?

A. Yes, that is the same door.

Q. That is the same door that is shown in this photograph; is that correct?

A. Yes, it is.

Mr. Roll: Now, at this time, if the court please, I offer into evidence People's Exhibit 18, this photograph, and the door, People's Exhibit 19.

The Court: They may be so marked.

Mr. Roll: I would like to pass this picture, People's Exhibit 18, to the jury.

The Clerk: The door was marked once before as Exhibit 6.

Mr. Safer: Yes, I think it was at the time of the measurements.

The Court: That is right. We do have that marked as 6.

Mr. Roll: I am sorry, your Honor.

The Court: We will cancel No. 19 and let it remain as 6.

Mr. Roll: All right.

The Court: That is, it is 6 for identification.

Mr. Roll: I will now offer 6 into evidence.

The Court: Mark it into evidence.

By Mr. Roll:

Q. Now, with reference to People's Exhibit No. 6, did you do what you call dust People's Exhibit 6 out there at the apartment itself on the evening of the 25th of July, [fol. 288] 1944, for the purpose of determining whether or not there were any fingerprints on that door?

A. I did.

Q. And did you find some fingerprints on the door?

A. I did.

Q. What did you do after you found prints on the door?

A. After I found prints I made labels, placed them next to the print where they would show in the photograph, placed the camera over the label and the print and photographed the print and the label on the door.

Q. How many different photographs did you take of fingerprints on the door there? I mean, different locations?

A. Three different photographs of prints on the door.

Q. And then later on—I will get into this later—later on did you cover over that area with this Scotch tape, where you took the photographs?

A. I did. I made a lift of three groups, of three prints, the three prints that I had photographed, and then I re-developed them, redusted them, and covered them all with Scotch tape.

[fol. 289] Q. I will go back into that. If you can, take People's Exhibit 6—will you be kind enough to hold that up there just a second?

(Witness does as requested.)

Q. On the, we will say, kitchen side of the door, the outside of the door, facing into the kitchen,—I am now pointing on the door near the hinge side where there is some Scotch tape; is that one area where you took a picture of some fingerprint?

A. That is.

Q. I now come to the same side of the same door, People's Exhibit 6, on the side near where the little catch is and the knob down near the bottom; is that the second place where you observed some prints and took some fingerprints?

A. That is.

Q. Now, will you turn the door around, please, sir, on the back side of the door, on the metal portion thereof, near the center and approximately, I should say, 9 or 10 inches from the top, I notice there is another piece of Scotch tape; is that another area where you dusted and took some fingerprint pictures?

A. That is.

Q. Do you have in your possession at this time the negatives of those pictures that you took?

A. I do.

[fol. 290] Q. And do you also have smaller developed pictures from there with you, or not?

A. I do.

Q. Now, will you first pick out for me, forgetting the negatives for a minute, the two that you developed from what we might call the front side of the door?

A. I developed these two of the front side, the side toward the kitchen.

Mr. Roll: I will ask that this be marked People's Exhibit No. — is it 19?

The Court: We can use 19 now. I would suggest, in view of the fact that the mere numbers do not indicate anything, you probably are going to mark them all 19 as a series.

Mr. Roll: That will be satisfactory, your Honor.

The Court: Suppose—I merely make this suggestion to both counsel,—that we might letter them, and also indicate whether they are the front or the back of the door, so that we can keep track of it ourselves and the jury can keep track of it as the occasion arises.

Mr. Safier: Yes, that is a good suggestion.

The Court: Or a front.

Mr. Roll: Yes. This will be 19. Do you want to put an "A" behind that, your Honor?

The Court: Yes, I think so. You will probably want to get the initial—

Mr. Roll: 19-A.

[fol. 291] The Court: And the word "Front" after it.

Mr. Roll: All right, your Honor. I don't know whether they can mark these negatives or not.

The Court: I do not think it is necessary to mark the negatives. This remark is addressed solely to counsel—I do not think the negatives will be of any particular value as evidence, because they are in reverse and they are pretty hard to follow.

Mr. Roll: I expect to have to use the negatives later on.

The Court: I see.

Mr. Roll: Probably by some of the other witnesses.

The Court: Well, that is all right. Why not put all the negatives into one envelope? They can be segregated very easily by anyone who has to handle them.

Mr. Roll: All right, your Honor.

The Court: Mark all the negatives 20.

By Mr. Roll:

Q. The second one you have handed me, is that another picture taken from the front side of the door?

A. Yes, both of these are from the front.

Mr. Roll: May this be marked 19-B Front?

The Court: 19-B Front, yes.

By Mr. Roll:

Q. Do you have in your possession the one marked back side or metal side of the door?

A. I have.

Mr. Roll: I will ask that be marked 19-C Front inside. [fol. 292] A. Inside the garbage disposal section.

Mr. Roll: I will mark that 19-C inside metal.

Q. Now, these three negatives that you now hand me here, are they corresponding negatives—do you want to check these—to the 19-A, 19-B and 19-C?

A. Yes, they are.

Mr. Roll: May those, if the court please, be marked 20?

The Court: Yes, we will mark all of the negatives 20.

Mr. Roll: All right, your Honor. I will give them to Mr. Moore, if he has a small envelope we can possibly put them in.

The Witness: I have an envelope here.

Mr. Roll: Oh, fine.

Q. Now, will you indicate with reference to, first, 49-A, which you have said was on the front, where that is located on the front, if you can describe it, please?

A. That is located on the left front of this section right here.

Q. That is on the side down below the glass knob?

A. Yes.

The Court: May I make a suggestion, Mr. Roll?

Mr. Roll: Yes, your Honor.

The Court: I do not see any objection, but I merely suggest it, however, we might put an "A" there and show the corresponding relationship.

Mr. Roll: On the door, your Honor.

[fol. 293] The Court: On the door itself. I have a colored pencil if you want to use it.

Mr. Roll: I think that will be very fine. I will use the red.

Q. All right, now, will you look at 19-B and tell me where that is?

A. 19-B is on the opposite side, right over here (indicating).

Mr. Roll: I will mark "B" with an arrow pointing to that.

Q. All right, now, 19-C, that is on the back side, I take it?

A. 19-C is on the back.

Mr. Roll: I will put a "C" here with an arrow pointing to it.

Q. Now, you also said that you took some lift prints?

A. I did.

Q. Now, will you describe to the court and the members of the jury what you mean when you say "lift prints"? What is a lift print?

A. A lift print is the developed latent print lifted with Scotch tape. It lifts the powder adhering to the surface of the print off. That is what is known as a lift print.

Q. When you use the term—we will go into a little more detail later on—latent print, what do you mean by a latent [fol. 294] print?

A. A latent print is a print left by the moisture from the fingers, and it corresponds to the pattern of the ridges on the surface of the inner finger.

Q. In other words, if I put my hand down here on this jury box rail, with my fingers like this, the surface is somewhat clean, I leave what is known as a latent print, is that it?

A. That is correct.

Q. Now, while you were working with this door there, did you notice anything—I notice that at the present time there is a screw there in the top hinge of People's Exhibit 6. Did you notice whether that was there at the time or not?

A. Yes, it was.

Q. Did you go around the apartment other than the door looking for fingerprints that you might photograph?

A. I examined a couple of glasses on the sink and I also examined a writing desk in the front living room.

Q. Did you find any prints that were good enough to develop?

A. No, I did not. I also examined the heels on the pair of shoes that were sitting on the floor beside the chair close to the door.

Q. Did you find any fingerprints on there that you could make pictures of?

[fol. 295] A. No, sir, I did not.

Mr. Roll: You may cross examine.

The Court: Just one question: You may want to ask the question on cross examination, and I think this is a matter relative to the word fingerprints. Mr. Ferguson, every time someone touches a piece of polished furniture does that indicate he is going to leave a fingerprint to be identified?

A. Not necessarily. If it is handled too frequently it gets an accumulation of moisture and grease from the fingers of other people.

The Court: What I am trying to get at is, I am trying to get you to tell this jury what we mean by a smudged print.

A. A smudged print is one that is in a condition that you cannot identify.

The Court: And why is it that you cannot identify it?

A. It is on top of other prints or it has been smeared when the fingers move and conditions were not ideal.

The Court: You may cross examine.

Cross-examination.

By Mr. Safier:

Q. What time was it you went out to apartment 410?

A. Approximately 9 o'clock.

Q. In the evening?

A. In the evening of July 25, 1944.

[fol. 296] Q. And when you got there tell us again who was present.

A. Ray Pinker was there while we were there. I don't know whether he was there when we got there or not. Officer Woodhull was with me, and I think Sergt. Wiseman and Sergt. Brennan were there too; also Capt. Thad Brown, of the Homicide Bureau, and Capt. Rasmussen of the Wilshire Detective Bureau.

Q. Were all of these people milling about the apartment at that time?

A. Well, they were in the front at the time we arrived.

Q. I see, all of them?

A. Well, to the best of my knowledge, they were.

Q. Was anybody in the kitchen?

A. Not at the time I went in there.

Q. I see. Now, did you go directly to the kitchen?

A. I was directed to the kitchen by Capt. Rasmussen, I believe, shortly after I got there.

Q. You commenced your search for prints in the kitchen, did you?

A. On the garbage disposal door, yes, sir.

Q. At the direction of somebody?

A. Yes.

Q. When you got into the kitchen was the light on?

A. Yes, it was.

Q. It was already on?

A. Yes.

[fol. 297] Q. Where was the garbage disposal door when you got into the kitchen?

A. It was leaning up against the cabinet underneath the kitchen sink.

Q. It was unhinged from the garbage compartment, wasn't it?

A. Yes, it was.

Q. You testified that you placed the papers that appear in this picture, Exhibit 18, underneath the door?

A. I did.

Q. Did you handle the door in doing that?

A. I merely touched the edges very carefully while I was placing the papers under it.

Q. You touched the edges of the door?

A. I touched the edges only.

Q. Now, I notice in the upper portion of this garbage disposal compartment there appears to be some things in there. Did you observe what they were at that time?

A. No, I did not. There is a shelf up over the section there. I do not recall what was in there.

Q. You do not recall. Now, where else in the apartment, if any place, did you search for prints?

A. As I said, I examined the glasses on the kitchen sink and the pair of shoes that were found on the floor, I took

them in the kitchen and examined them, and I examined a writing desk in the front room.

[fol. 298] Q. Did you make any examination of the front door of the apartment that leads into the hall for prints?

A. No, I did not.

Q. Did you make any examination of the body for prints?

A. No, I did not.

Q. Did you make any examination of the coat that was on the body for prints?

A. No, I did not.

Q. Or any cushions that were on the body?

A. I did not.

Q. Did you make any examination of the lamp for fingerprints?

A. I did not.

Q. Now, you said you examined some glasses in the sink. Did you find any prints on the glasses?

A. None that could be identified.

Q. Did you find any prints on the secretary that you looked at?

A. I did not.

Q. Have you told us every place that you did examine for fingerprints on that occasion?

A. As far as I can recall, that is all I examined.

Q. I see. From that examination is it a fact that you were unable to obtain any prints from any place other than this garbage disposal door?

A. That is correct, no prints that could be identified.

[fol. 299] Q. Now, when you say you made an examination of the glasses and the secretary, did you make that by sprinkling, dusting powder on it?

A. I did.

Q. Now, did you make these photographs of the prints of the garbage disposal door yourself?

A. I did.

Q. What kind of film did you use in that camera, is it a roll film?

A. No, it is a plate holder.

Q. A plate holder. A separate plate for each film?

A. That is right.

Q. When had you put the plates in with which you took these particular photographs?

A. I put the plates in my kit immediately before I went on the call.

Q. When did you put them in the camera?

A. I put them in the camera just before I took the photographs.

Q. How many photographs did you say you took altogether?

A. Three photographs.

Q. Three photographs. How many prints did you find on the door?

A. I found a few partial prints adjoining the single print on the inside that were smudges. In other words, they were prints that could not be identified, the ridge patterns were [fol. 300] destroyed.

Q. Did you take a photograph of them?

A. No. I photographed only the prints that could be identified and we found the prints that are in these photographs.

Q. Did you take the photographs before you put the Scotch tape on the prints?

A. I did.

Q. You did what?

A. I photographed them before I put the Scotch tape on them.

Q. I see. Now, how many different prints did you photograph of the door?

A. I will count them. In this there is one good one and part of a smudge; in this there are three and part of another.

Q. May I see those, please?

A. And in another photograph there are three fingerprints.

Q. Did you develop these pictures yourself?

A. I did not. I took them in to the laboratory and they were developed in my presence.

Q. How long did you remain in the apartment that evening?

A. It was almost 10 o'clock when I left.

Q. And did you take the camera to the laboratory on that [fol. 301] same evening?

A. No, I took the camera back to the office.

Q. Where is your office?

A. It is in the City Hall.

Q. You took your camera back to the office and left it there?

A. Yes.

Q. Overnight?

A. Yes.

Q. Is that office occupied by other persons besides yourself?

A. Yes.

Q. And other persons—strike that. Whereabouts in the office did you leave the camera?

A. In the cabinet where we keep the cameras.

Q. Were there other cameras in the cabinet?

Mr. Roll: Well, I am going to object to this on the ground it is immaterial.

The Court: I think we are getting into matters that have no relationship in particular. It is not material as to where he left the camera, whether he left it under lock and key or placed it in a cabinet—

Mr. Safier: I think we have a right to follow up these films—

The Court: You can follow it up, but we have him taking the camera into the room and having the film developed, and [fol. 302] there is no reason to find out what—

Mr. Safier: As I understand his testimony at that time, we are talking about when he left the cameras in the office, I believe the pictures were still in the camera.

The Court: Let's find out whether that was the situation.

By Mr. Safier:

Q. At the time you left the camera in the office were the films still in the camera?

A. No, the films were not.

Q. When had you removed the films?

A. Immediately after taking the photographs.

Q. You mean while you were still at the apartment?

A. Yes.

Q. What did you do with them, please?

A. Took the films out and put them in my kit.

Q. What did you do with the kit?

A. I brought the kit back into the office with the films.

Q. All right. Did you have some other films in that kit too?

A. No other exposed film, no.

Q. No other exposed film. Did you leave the kit in your office then overnight?

A. The kit was left in the office but I took the plates out and took them over to the laboratory.

Q. The same night?

A. Yes.

Q. About what time of night was it you got over to the [fol. 303] laboratory?

A. It was a little after 10.

Q. What did you do with the film after you got to the laboratory?

A. Took them in the laboratory and had them developed.

Q. I see. You handed them to somebody to develop?

A. Yes.

Q. You did not make the prints, make the negatives yourself there, did you?

A. No, I did not.

Mr. Safer: I think that is all.

Mr. Roll: Just one or two other questions, if the court please.

Redirect examination.

By Mr. Roll:

Q. In direct examination you said something about putting a marker on the film—I am looking for 19-A, B and C.

A. Wait a minute. I have them here.

[fol. 304] Q. Now, if I understand, before you actually took the pictures you did something with reference to the film itself so that there would be some printing on the film in conjunction with the print; is that correct?

A. I made a tag with the printing on it identifying the photograph.

Q. And that appeared—how did you make that tag, will you tell us that?

A. I wrote on a small piece of brown paper with adhesive on the surface, I wrote the date and the name of the victim and the place where I found the print, and I put my initials on there.

Q. You did that with reference to each one of the three pictures you took?

A. I did.

Q. And that was actually placed on the negative?

A. That was.

Q. So you positively know that those are the pictures that you took and those are the negatives; is that it?

A. Yes, that is right.

Q. Now, you told us about taking some lift prints. Do you have those with you?

A. Yes, I have.

Mr. Roll: I think I will ask that the lift prints be marked. The Court: 21 for identification.

[fol. 305] By Mr. Roll:

Q. Can you, if you can—we will mark that A, B and C also and try and make them correspond.

A. This is the one that corresponds with 19-C.

Mr. Roll: I will mark that 21-C.

A. This is the one that corresponds with 19-A.

Mr. Roll: I will mark this one 21-A.

A. This is the one that corresponds with 19-B.

Mr. Roll: I will mark that 21-B. Now, I will offer these in evidence, if the court please, as People's Exhibit 21.

The Court: Marked 21.

Mr. Roll: Cross examine.

The Court: May we proceed, please?

Mr. Safier: I have no further examination.

The Court: that is all, Mr. Ferguson.

(Witness excused.)

The Court: I think we will take our recess at this time. The jury keep in mind the admonition not to talk about the case or form or express any opinion. Take our recess for the afternoon.

(Recess.)

[fol. 306] MRS. LILLY W. BAILEY, called as a witness on behalf of the People, was duly sworn and testified as follows:

The Clerk: State your name, please.

A. Mrs. Lilly W. Bailey.

Direct examination.

By Mr. Roll:

Q. Will you state your full name again, please?

A. Mrs. Lilly W. Bailey.

Q. How do you spell your last name, please?

A. B-a-i-l-e-y.

Q. Where do you live, Mrs. Bailey?

A. I live at 918 South Manhattan Place.

Q. That is here in the City of Los Angeles?

A. Yes, sir.

Q. Is your occupation that of a housewife?

A. It is.

Q. Directing your attention to a lady by the name of Stella Blauvelt, did you know her during her lifetime?

A. I did.

Q. About how long had you known Stella Blauvelt prior to her death?

A. I think about twenty-five years.

Q. A social acquaintanceship?

A. She was my neighbor for many years. In fact, she owned a home right next door to my home.

[fol. 307] Q. Here in Los Angeles?

A. Yes, sir.

Q. About how long have you lived where you now live?

A. Thirty-five years.

Q. About how long did Mrs. Blauvelt live next door to you there?

A. I think about twenty-five, but the last two years she was not living there.

Q. Now, directing your attention to Sunday, the 23rd day of July, 1944, did you see Stella Blauvelt on that day?

A. I did.

Q. Where did you see her?

A. At my home.

Q. About what time did you see her?

A. She came about 2 o'clock in the afternoon.

Q. How long did she remain at your home, Mrs. Bailey?

A. Until a quarter of five.

Q. Did you notice whether, on that day, at your home, meaning the 23rd of July, on Sunday, that she was wearing any rings?

A. Yes, sir, she was.

Q. Did you see them?

A. I did.

Q. Can you tell us which hand she had the rings on?

A. On her left hand.

Q. During the time you have known her, after she moved [fol. 308] away, about how often would you see her?

A. Well, I think I might safely say, during the club season, about three times a month; not every week.

Q. Did you and Mrs. Blauvelt belong to some club together?

A. We did.

Q. What club?

A. Los Angeles Ebell.

Q. Do they have weekly meetings?

A. Yes, sir.

Q. What day is that?

A. On Monday.

Q. Over the period of years that you have known her, we will say, the last three or four years, limit it to that time, so far as her wearing rings are concerned, did you notice her wearing rings frequently, all the time, or what?

A. I never saw her without those rings.

Q. Can you tell the court and the members of the jury, Mrs. Bailey, anything about Mrs. Blauvelt that—I will withdraw that. There in your home on the 23rd of July, when Mrs. Blauvelt was talking to you, what, if anything, did she do with her hands?

A. She always used her hands when she talked, and that is why I noticed her rings so particularly.

Q. That was a habit of hers, was it?

A. What is that?

Q. Was that a habit of hers?

[fol. 309] A. Yes, sir.

Q. Will you, as best you can, describe the rings? I don't mean as to the details. I will ask you this question, first: Are you familiar with diamonds?

A. I am.

Q. Will you describe any of the rings she had as being ones containing diamonds?

A. They were diamonds.

Q. We will take the size of what we may call the largest ring; approximately what size would you say it was?

A. I think that was a solitaire, the large one.

Q. A solitaire?

A. Yes. At least over a carat, I should think.

Q. Then she had another ring?

A. Some cluster ring, too.

Q. She had a cluster ring, too?

A. Yes.

Q. And a wedding ring?

A. Yes, sir.

[fol. 310] Q. When she left your home there on the 23rd of July, on Sunday, how did she—did she just leave there or did you take her home?

A. We took her home.

Q. You took her back to her apartment on South Catalina?

A. Yes, sir, and left her there.

Q. About what time was that?

A. We left the house at a quarter of five, Sunday afternoon.

Q. About how far is that from you?

A. Well, it is a short distance, because Manhattan Place is just one block west of Western, and Catalina is east of there about five or six blocks. It is not but a very short distance from my home.

Mr. Roll: You may cross examine.

Cross-examination.

By Mr. Safier:

Q. I believe, Mrs. Bailey, you testified Mrs. Blauvelt lived next door to you, I think, until about two years ago?

A. She sold that home about two years ago, I think.

Q. Well, can you fix the time a little more certain, as to when she moved away?

The Court: What is the materiality as to whether it was—just the precise time two years ago? Frankly, I cannot see it.

Mr. Safier: Well, I will withdraw it.

[fol. 311] Q. Anyway, it was about two years ago?

A. Yes.

Q. Is that correct?

A. About that, I should say.

Q. You continued to see her after she moved away about how often?

A. Well, I might say about three times a month during the club season.

Q. What is the club season?

A. From the first of October until the latter part of June.

Q. From October until June?

A. Yes, sir.

Q. Now, when Mrs. Blauvelt was at your home on Sunday, July 23rd of this year, how many rings was she wearing?

A. Well, I could safely say she had three on her hands; there might have been more.

Q. Were they all on one finger or were they on different fingers?

A. On different fingers.

Q. On different fingers?

A. As I remember, yes, sir.

Q. Well,—

A. Not all—I don't think they were all on one finger.

Q. I beg your pardon?

A. I don't think they were all on one finger.

[fol. 312] Q. Let me ask you this question: Did she wear them all on one hand or was she wearing some on the left hand and some on her right hand?

A. I did not notice any on her right hand. I noticed those on the left hand because she always talked and used her left hand.

Q. How many rings do you recall were diamond rings?

A. Well, I can recall two vividly, diamond rings; there might have been more.

Q. What is the third ring that you recall?

A. I think a gold band wedding ring.

Q. Now, can you remember on which finger she had the gold band?

A. Why, on the one that one always wears their wedding ring on; that finger (indicating), next to the small—

Q. The third finger of the left hand?

A. Yes, sir, the third finger.

Q. Is that the finger Mrs. Blauvelt was wearing her ring on at that time?

A. Yes, sir.

Q: Now, referring to the diamond ring, can you tell me on which finger she was wearing the diamond ring?

A. I know there was one on the third finger and I think one on the small finger.

Q. One on the third finger and one on the small finger?

A. Yes, sir.

[fol. 313] Q. Is that the way she customarily wore her rings, one with her wedding band and one on her little finger?

A. I think so.

Q. I did not hear you; I am sorry.

A. Yes, sir.

Q. You left Mrs. Blauvelt at her home on July 23rd what time?

A. I should say about five minutes of 5. We left our house about a quarter of 5.

Q. Was that the last time you saw Mrs. Blauvelt alive?

A. Yes, sir.

Mr. Safier: That is all.

Mr. Roll: That is all.

Mr. Safier: One more question. Just one more question, please.

The Witness: Yes, sir.

Q. Did Mrs. Blauvelt wear her wrist watch when you saw her on that Sunday?

A. That I cannot recall.

Q. You do not recall?

A. No, sir.

Mr. Safier: All right, that is all.

(Witness excused.)

Mr. Roll: Call Mrs. Frances Jean Turner.

[fol: 314] MRS. FRANCES JEAN TURNER, called as a witness on behalf of the People, was duly sworn and testified as follows:

The Clerk: State your name, please.

A. Mrs. Frances Jean Turner.

Direct examination.

By Mr. Roll:

Q. Your name is Frances Jean Turner?

A. Yes, sir.

Q. Where do you live, Mrs. Turner?

A. 1739 West 36th Place.

Q. Maybe, if you will pull the microphone up, it will be a little easier for you. Will you give us that address again, please?

A. 1739 West 36th Place.

Q. Where is that with reference to Western Avenue in the city of Los Angeles?

A. It is west of Western Avenue.

Q. About how far?

A. Half a block.

Q. About how long have you lived there?

A. Eight years.

Q. Do you own that home?

A. No, sir.

Q. You rent?

A. Yes, sir.

[fol. 315] Q. Directing your attention to a place known as the Colony Club, do you know where that place is located?

A. Yes, sir, 29th and Western.

Q. 29th and Western?

A. Yes.

Q. That is in the city of Los Angeles?

A. Yes, sir.

Q. About how far is that from your home?

A. I imagine it is about twelve blocks.

Q. Now, directing your attention to the Colony Club, were you in the Colony Club some time between the 10th and 14th of August, 1944?

A. Yes, sir.

Q. Directing your attention to the defendant in this case, Dewey Adamson, who is seated at the end of the counsel table, did you see him in there?

A. Yes, sir.

Q. Some time between the 10th and the 14th of August?

A. Yes.

Q. What time of day or night would you say that you saw him in the Colony Club?

A. Well, it was before dark; I imagine it was around 6 or 6:30, some time along there; it was in the early part of the evening.

Q. Were you present at some conversation between the defendant and some other person wherein a diamond ring [fol. 316] was mentioned?

A. Yes, I overheard him ask some man if he would be interested in—

Mr. Safier: Just a minute. I think the question has been answered, your Honor, and I move to strike the voluntary answer.

The Court: After the answer "Yes" we will let the balance of the answer go out at the present time.

By Mr. Roll:

Q. Where did this conversation happen, what place?

A. In the Colony Club.

Q. Where in the Colony Club?

A. At the bar.

Q. Where were you at the bar?

A. I would imagine it would be maybe the third stool from the door.

Q. Where was the defendant, Adamson?

A. Sitting on my righthand side, that would be.

Q. Where was this man he was talking to?

A. He was seated on the other side of Mr. Adamson.

Q. What was the conversation?

Mr. Safier: Objected to, your Honor, no proper foundation laid.

The Court: What foundation?

Mr. Safier: Well, persons present—

A. Well, I just happened to overhear—

[fol. 317] The Court: Wait a minute. There isn't any rule that requires you to have all parties present at the conversation named, and there does not need to have been any person present, as far as that is concerned. You may proceed.

By Mr. Roll:

Q. Go ahead and relate the conversation so far as it pertains to the diamond ring.

A. Well, I just happened to overhear him ask this man if he would be interested in buying a diamond ring. He really wasn't talking to me. I don't know why I did hear it.

Q. What, if anything, did the man say?

A. He said no, he was not interested.

The Court: I did not hear it, Mr. Reporter.

(Answer read.)

By Mr. Roll:

Q. Who was it that asked the man if he would be interested in buying a diamond ring, who asked that?

A. Who asked that? Dewey.

Q. Dewey?

A. Yes.

Q. That is this defendant here?

A. Yes, sir.

Mr. Roll: Cross examine.

Cross examination.

By Mr. Safer:

Q. This Colony Club to which you have reference is run [fol. 318] by and frequented by colored people, is it not?

A. Yes, it is.

Q. Was that the first time you had been in there, or had you been in there on other occasions?

A. Well, I had been in there off and on for the last eight or nine years.

Q. Did you know Mr. Adamson before?

A. Just by him coming in there. I was never really acquainted with him.

Q. Did you know his name?

A. Nothing more than just hearing people call him "Dewey." I didn't know the rest of his name, his last name.

Q. On how many occasions had you seen Mr. Adamson in the Colony Club prior to the occasion to which you have now testified?

A. I do not believe I saw him there more than four or five times.

Q. Four or five times. Now, what date was it that this conversation took place?

A. It was between the 10th and 14th of August.

Q. How do you fix that time?

A. Well, because I have a friend who I talked to yesterday and day before yesterday, too, that more or less brought it to my mind about the time that it would be through the hours that he works.

[fol. 319] Q. Now, you mean you fix the time as being between August 10th and August 14th of this year because some friend of yours told you that that was the time?

A. Yes.

Q. You have no independent recollection of when it was?

A. Well, I knew it was around about that time but I did not know just exactly what time, whether it was around the 1st or the 10th or 14th. It was the first two weeks of August, that is all I knew, until I talked to Mr. Gaines.

Q. You are positive it was some time in the first two weeks of August?

A. Yes.

Q. Do you remember what day of the week it was?

A. No, I don't remember that.

Q. Could you state whether or not it was a week day or whether on a Sunday?

A. It could have been Tuesday or a Thursday; it could not have been on Wednesday, because they are closed on Wednesdays.

Q. I see. And you were sitting at the bar, were you?

A. Yes, sir.

Q. Were you drinking?

A. I had a few glasses of beer but I had not even been served beer at the time that I heard the conversation. I had just come in.

Q. You just came in?

[fol. 320] A. Yes.

Q. And you had not had anything to drink at all?

A. I had not been served a beer yet, no.

Q. How long did you remain in the Colony Club that evening?

A. Oh, I imagine an hour or an hour and a half.

Q. How many drinks had you had during that hour or hour and a half?

A. I probably had five or six drinks.

Q. Five or six drinks of what?

A. Glasses of beer.

Q. Did you remain at the bar all of that time?

A. Yes, sir.

Q. Was Mr. Adamson at the bar too?

A. He was at the bar when I went in, yes, sir.

Q. Now, did you hear this conversation when you first went into the Colony Club, or had you been in there some time before you heard it?

A. Well, they had been talking, evidently, before I came in. I mean, I didn't even know how I happened to even listen to it. I just sat down like anybody would, and they were talking, and there wasn't very many people in there and it is not so hard in a little place to overhear conversation, not that I was listening for anything.

Q. Was Mr. Adamson already in the Colony Club when you arrived?

[fol. 321] A. Yes, sir.

Q. And when you walked into the Colony Club did you come in alone or were you with somebody?

A. I was alone.

Q. Where was Mr. Dewey seated when you came in?

Mr. Roll: Just a moment, if she knows. That assumes something not in evidence.

The Court: Overruled. You may answer.

[fol. 322] A. Well, I would say he probably would have been on either the fourth or fifth stool; it could not have been any further back than that, because I know I could not have had any more than maybe the third stool myself on the bar as I walked in.

Q. You did see Mr. Dewey sitting there when you first entered, didn't you?

A. Oh, yes, yes.

Q. Were there other people seated at the bar, too?

A. There was an elderly man that we call "Tim." I don't know what his name is.

Q. A white man or colored man?

A. A white man.

Q. Other than Mr. Dewey and this man that you called "Tim" was there anybody else seated at the bar when you came in?

A. Well, there could have been. There wasn't very many people in the place. I think there was, away up at the other end of the bar perhaps a couple of men seated up there.

Q. How long a bar is it?

A. I would not say whether one or two. I don't believe I looked up there.

Q. I see.

A. I didn't pay much attention, I mean.

Q. Well, you sat down at a stool at the bar then, didn't you?

[fol. 323] A. Yes, sir.

Q. How many stools were you away from Mr. Adamson?

A. I had the one next to him.

Q. You sat on the stool next to Mr. Adamson?

A. Yes, sir.

Q. Where was the man to whom Mr. Adamson was talking?

A. He was on the other side of Mr. Adamson.

Q. And was this other man a white man or a colored man?

A. He was a colored man.

Q. Do you know his name?

A. No, I never saw him before.

Q. You never saw him before. About how old a man did he appear to be?

A. Well, I suppose around about thirty-five, maybe.

Q. How was he dressed?

A. I do not believe I remember.

Q. How was Mr. Adamson dressed?

A. I don't believe I can remember that.

Q. Was Mr. Adamson wearing a hat?

A. Yes.

Q. Was the other man wearing a hat?

A. Yes, I believe he was, yes.

Q. Was there anybody else in the Colony Club that you knew when you arrived there that evening?

A. No, just this man that we call "Tim" and Eddie and his wife that own the place. I don't know their last names.

[fol. 324] Q. They are colored people, too, aren't they?

A. Yes, sir.

Q. Was there any entertainment there that evening, some band playing?

A. No, they have no orchestra or anything like that; just a music box.

Q. Was the music box,—was there some music coming from the music box?

A. I don't remember of any, no.

Q. You don't remember. Now, how long prior to that particular evening had you seen Mr. Adamson?

A. Oh, maybe a week or ten days.

Q. I see. Could you be mistaken about it being Mr. Adamson that you saw at the Colony Club that night?

A. No, there is no mistake about knowing him.

Q. No, I did not ask you if you are mistaken about knowing him. I asked you if you may be mistaken about he being the man you saw at the Colony Club that evening?

A. No.

Q. You could not be mistaken?

A. No, I am positive it was him.

Q. Was he wearing a mustache at that time?

A. No, I don't think so—I don't know.

Q. Well, on the other occasion that you saw him prior to that particular evening was he wearing a mustache or not?

A. Yes, I believe he had just a very thin mustache.

[fol. 325] Q. But that particular evening he did not have any?

A. I don't know; I did not observe him that much, I wasn't—

Q. Are you able to say as to that particular evening that you had that conversation whether Mr. Adamson was wearing a mustache or not?

A. He probably was. I can remember that he has had a mustache.

The Court: Can you tell, looking at him now, whether he has a mustache from where you are looking at him?

A. I really never observed the man enough; I was never interested.

The Court: Look at him right now and tell me whether he has a mustache right now or not.

A. It doesn't look like it from here.

Mr. Safier:

Q. You say it doesn't look like it from where you are seated?

Mr. Roll: Will you read the answer, Mr. Reporter?

(Answer read.)

By Mr. Safer:

Q. You were a lot closer to him that evening at the Colony Club than you are now, were you not?

A. Yes, sir.

Q. How many feet away from him were you at the Colony Club that evening?

A. The width there is between two stools.

Q. Well, how far in feet to the best of your judgment?

[fol. 326] A. I did not hear your last question, I am sorry.

Q. In feet how far was it to the best of your judgment?

A. Well, it was about a foot and a half; I do not think it is even two feet the stools are apart; I am not sure.

Q. About a foot and a half?

A. I would imagine so.

Q. You can't tell me whether he had a mustache on that evening or not?

Mr. Roll: I object to that as asked and answered.

The Court: Sustained.

Mr. Safer:

Q. All you heard Mr. Adamson say was "Do you want to buy a diamond ring"?

A. Yes.

Q. The other man said he did not; is that correct?

A. That is right.

Q. You did not see any diamond ring?

A. No.

Q. Did you just take one glance at Mr. Adamson that evening or were you sitting there watching him?

A. Well, he was more or less talking to this man. He simply spoke when I sat down, he just said, "Hello, Frances" and I said "Hello" and was talking to Tim. [fol. 327] In fact, my back was turned, really, and I would not say turned to—I was facing Tim and my back would be to Dewey, because I was talking to him and he was talking to this, whoever the man was; I didn't know the man.

Q. He said, "Hello, Frances"?

A. Yes. Most everybody up there knows me and speaks.

Q. Have they a juke box in that Colony Club?

A. Yes.

Q. Do you remember whether that was playing at that time?

A. No.

Q. You don't remember, or it was not playing?

A. They play it and do not play it; that is something I don't pay much attention to. I am always glad when it doesn't play because I don't care for the records.

Q. Can you tell us whether it was playing at that time or not?

A. No, I don't believe it was.

Q. You don't believe it was. Who is this party you called up to refresh your recollection about dates?

A. Mr. Harold Gaines.

Q. Was he with you on that evening?

A. No.

Q. Who left the club first, you or Mr. Adamson?

A. Mr. Adamson.

Q. How long after you came in there—strike that. How [fol. 328] long after you had this conversation did Mr. Adamson leave?

A. I don't believe I know. I don't believe I paid any attention to when he walked in or walked out. Several other people came in after that and people would get up and leave, and sit down. I really don't know.

Q. Was that all the conversation you overheard?

A. Yes.

Q. As a matter of fact, you are not even sure that you heard that, are you?

A. Yes, I am pretty sure I heard it.

Q. You are pretty sure?

A. Yes, sir.

Mr. Safier: I have no further questions.

Mr. Roll: That is all.

The Court: That is all.

Mr. Roll: May this witness be excused?

The Court: Yes, you may be excused.

Mr. Roll: Does your Honor want to take the recess now?

The Court: Well, I think we will take our recess at this time. We have reached our recess time. The jury will keep in mind you are not to talk about the case or form or express any opinion. Take a recess until tomorrow

morning at 9:30. All witnesses are instructed to return at 9:30 tomorrow morning.

(Whereupon an adjournment was taken until Friday, November 17, 1944, at 9:30 o'clock a. m.)

[fol. 329] Friday, November 17, 1944; 9:30 O'clock A. M.

The Court: Let the record show the jury, counsel and defendant present in the case on trial. You may proceed.

Mr. Roll: I wonder, if your Honor please, with your Honor's permission, if we could take the little diagrams off the board and erase the little sketch?

The Court: Yes, that might be done.

Mr. Roll: Then when we get the easel we can put them on that.

The Court: By the way, those diagrams have not been offered in evidence as yet.

Mr. Roll: I will offer them in evidence.

The Court: Marked 1 and 2 in evidence.

Mr. Roll: Mr. Larbaig.

JOHN B. LARBAIG, called as a witness on behalf of the People, was duly sworn and testified as follows:

The Clerk: State your name, please.

A. John B. Larbaig, L-a-r-b-a-i-g.

Direct examination.

By Mr. Roll:

Q. Your name is John B. Larbaig?

A. That is correct.

[fol. 330] Q. Mr. Larbaig, you are attached to the Los Angeles Police Department; is that true?

A. I am.

Q. How long have you been in the Los Angeles Police Department?

A. Nineteen years and ten months.

Q. What is your duty at the present time?

A. Scientific investigation division in the fingerprint detail.

Q. How long have you been in that particular detail?

A. Approximately thirteen years.

Q. Mr. Larbaig, prior, we will say even to going into that particular detail and during the time you were in there, have you made any study of fingerprints, fingerprint comparisons and fingerprint classifications?

A. I have.

Q. Will you state to the court and jury what study you have made, what books you have read, if any? Will you do that, please?

A. I have read numerous books on fingerprints such as Henry in Classification; Kuhne on Prints, Batley and Larson on Single Fingerprints.

The Court: Mr. Larbaig, pardon me. It might be of some interest to the jury if you will just, in a few words, tell us the difference between the Henry System and the Larson System.

[fol. 331] A. The Henry System is the classification of the complete set of fingerprints, in other words, the impression of each separate finger, including your right and left hand; the classification of all those fingers combined is the Henry System. The Larson is the classification of one single print.

The Court: In other words, if you found one single print and are trying to find it in your records, it would be rather difficult to find it under the Henry System, but under the Larson System you could?

A. That is correct.

The Court: In other words, you could more readily?

A. Yes, much more.

The Court: You may proceed.

By Mr. Roll:

Q. Now, in addition to reading those books have you attended lectures and taken any educational courses?

A. I attended several lectures and schools for a short period of time, one put on by the Federal Bureau of Investigation, a monthly periodical that they send out on fingerprints.

Q. Now, with reference to the time you have spent over there in the Police Department, working on fingerprints, how long has that been?

A. Approximately thirteen years.

Q. And you have testified in court a number of times on [fol. 332] fingerprints; is that correct?

A. I have.

Q. Fingerprint comparisons, is that true?

A. That is true.

Q. Now, will you explain to the court and to the jury, Mr. Larbaig, first, what you mean when you use the words "latent fingerprint"?

[fol. 333] A. Well, the word "latent" originally is that it is invisible. In other words, a latent print—it is an impression of your fingers left on a fairly clean surface. In some instances it is visible, such as glass or something like that, that you can hold up and you can readily see the moisture that your impressions have left there. But on some surfaces it is invisible, and thereby derives the word "latent." It is invisible in the majority of cases until developed by some kind of a powder.

Q. All right. Will you tell us with reference to the leaving of a fingerprint by touching certain objects, such as a clean surface, such as a fairly clean surface, what actually leaves the impression of the fingerprint on there? What is there about the fingers or the glands or anything along that line that actually leaves the impression of the prints on there?

A. Yes. The fingers or hands are so constructed that on the ridge portion of your hand there is a series of sweat glands or ducts, so-called, and that perspiration is mostly always—in general cases it is—comes through these pores and there is an oily substance, a natural substance that is exuded from the body that is always left on your hands, and when you touch this surface, fairly clean surface, you leave that perspiration and that oil on that surface.

The Court: You refer to some ridges. Will you just [fol. 334] tell us a little more about it? This may be new to some of the ladies.

A. Well, the construction of, I would say, the area that we call the prints that we use, contains ridges, little fine ridges and also depressions. In other words, you have your valleys and mountains. Your ridges represent the mountains, and then there is a valley in between your ridges.

By Mr. Roll:

Q. When you leave an impression by touching an object what actually—what part of the finger makes the impression?

A. The ridges.

Q. And the valleys will show after the picture is photographed, after the print is photographed, as white spaces, is that true?

A. That is true. If it is developed with black powder the ridges will show black, and the depression part, the valleys, will show white; that is, the same color as the background.

Q. With reference to fingerprint patterns, that is the patterns in the fingers themselves, generally how many different types of finger patterns are there?

A. Well, in general type we have—there are four distinct patterns. We have one called the loop, whorl, arch and tented arch.

Q. There are different kinds of loops. In other words, you take and break a loop down, isn't that true?

[fol. 335] - A. We have two distinct loops. We have one called the ulnar loop and one called the radial loop.

Q. With reference to some of the other general classifications are they also broken down?

A. Yes, the whorls,—yes, your whorls are broken up in quite a few. You have different types of whorls.

The Court: You have another classification covering the unusual case?

A. The composite patterns. That includes one or more patterns, but it is classified as the whorl.

Mr. Roll: May I have your Honor's permission to erase that?

The Court: Yes. That is there just for a temporary illustration. Let the record show the drawing made by Mr. Maurer as representing the possibility of lifting the shelf in the so-called garbage compartment was not offered in evidence, and has been erased.

By Mr. Roll:

Q. I wonder, Mr. Larbaig, if you would step to the blackboard there and with this crayon draw on the blackboard—give us an illustration of the four general patterns,

that you have mentioned in your testimony, and make it large enough so we can see it down here, if you will?

(Witness draws on blackboard.)

Q. Will you explain what you have put on there? You put something there; will you explain what it is?

[fol. 336] A. These are called a loop pattern print; they come up and loop, and this most central portion is called the core, and the pattern area tends to go up around that and loops and right back in the direction where your ridge started out from. If it appears on one hand, in the right hand, it is a radial loop, and if it appears in the left hand, it is called an ulnar loop; and the reverse to this one over here; this is a loop in the other direction. If appearing in the right hand it is an ulnar loop and if it appears in the left hand it is a radial loop.

[fol. 337] The Court: The reason for calling them that, one slants toward the radius and one slants toward the ulnar bone?

A. The radius and ulnar bone. In the right hand the ulnar loop slants to the right or toward the ulnar bone, and in the left hand it slants to the left, which is just the reverse, the ulnar bone being on the outside of the arm. In the radial loops, such as the one on the left, if appearing in the right hand it slants in the opposite direction.

The Court: I think that covers it.

A. This type is known as the whorl type. It has what, in fingerprint terms, it must have what we call two deltas to consist of a whorl, but the general pattern just circles and goes around the centermost portion of this, which is the core. It tends to go around that area. Those are all classified as whorls. There are several different patterns of whorls but this is the most general type.

By Mr. Roll:

Q. Mr. Larbaig, before you move on to your next one; will you be kind enough to take the two blue patterns you have shown on the board, the right ulnar—will you mark out where the cores are there? Just put an arrow up and put a "C" on it.

(Witness does as requested.)

Q. Will you do the same thing with reference to the whorl?

[fol. 338] (Witness does as requested.)

Q. Now, you mentioned also on the whorl that there are two deltas. Can you come down with some letters, with a "D" and show that?

(Witness does as requested.)

Q. What do you mean when you say "delta"?

A. Well, it is in illustrations in books, it is the same as you have your delta, it is the term the same as you have in your rivers. Your portion of land which is out in the middle of that they call the delta of that river, and these ridges, when they tend to flow from one side to the other side of that portion in between there, right here, that is called the delta for fingerprint classification. We also have in this portion here, this part here is called the delta on the loop pattern print.

Q. All right, if you will go ahead with your next one.

A. This type of pattern is just about all the name implies, they just arch out from one side of your finger to the other. That is known as the arch pattern.

Q. Before you get over there, have you shown enough of that arch pattern to show where the core will be in that?

A. There are no cores or deltas in your plain arch pattern. All your other patterns, your ridges come out from one side of the finger and arch over and go right out through the other side. Then the tented arch, almost the same thing takes place and the centermost portion of the [fol. 339] pattern appears in that respect. This is termed, as your tented arch.

Q. Now, in a tented arch is there a core?

A. Not necessarily, no, but you could term this part here—there is no ridge counting or anything else in fingerprint classification as to your arches, but it is the centermost portion of that print would be termed as that. We never do it, we do not have to count ridges on them.

Q. Those are the four general patterns you mentioned in your testimony, is that correct?

A. That is correct.

Mr. Reil: If you want to resume your seat, unless your Honor has some further questions.

The Court: No, I think he has fairly well covered the preliminary matters.

By Mr. Roll:

Q. Now, Mr. Larbaig, with reference to fingerprint work and making fingerprint cards for filing with the Police Department, the Sheriff's office or the Federal Bureau of Investigation, or some of the industrial plants that use them, will you tell us how a fingerprint card is made? Just a second—May I have one of the cards there, please? I think probably I will withdraw that.

I have here, Mr. Larbaig, two cards which I ask be marked for identification at this time.

The Court: Our next number is 22.

[fol. 340] Mr. Roll: I will ask that the one be marked, the one which is indicated as being taken at 2:10 be marked No. 22, and the one which is indicated as being taken at 2:12 be marked as 23. I will put a circle around the number.

Q. Now, I show you here two cards, Mr. Larbaig. Will you state what those cards are?

A. They are rolled impressions, inked impressions of the defendant, A. D. Adamson.

Q. Did you, yourself, actually take and roll the prints of the defendant, A. D. Adamson?

A. I did.

Q. With reference to People's Exhibit No. 22 for identification on what date and at what time and where was People's Exhibit 22 made?

A. They were rolled on August 31, 1944, at 2:10 p. m. in the county jail.

Q. And with reference to People's Exhibit No. 23, when was that rolled?

A. On August 31st, 1944, at 2:12 p. m. in the county jail.

Q. Will you tell us, Mr. Larbaig, what equipment you use to roll, as you say, the prints of an individual?

A. We use a roller, that is a small rubber roller, with a roll the diameter of which is about an inch, and a glass slab or plate approximately a foot and a half long, 6 inches wide, and printer's ink.

[fol. 341] Q. Will you illustrate by the card, Mr. Larbaig—I will now offer these two cards into evidence, if the court please, 22 and 23.

The Court: They will be marked 22 and 23.

Mr. Roll: Will you step right up here?

The Court: You might have Mr. Larbaig explain as he goes along what he does, starting with the material he has given what he does with the inks and the material.

Mr. Roll: That is what I would like to have you do. If you want to use my hand, assuming you have to put the substance on it, you can do that if you want to do it.

A: First of all, the ink comes in tube form, and a little bit of it is squeezed out onto this slab. It is rolled up evenly and smooth onto this glass plate we have, rolled out even. Then the procedure is first, as you see in the upper, and in the next row these represent the right hand and these the left hand. These are rolled impressions which I will show you how they are obtained. They are taken, one set on this slab, and rolled all the way over there and then placed on this card, and in the same motion rolled from one side to the other. All ten of these are put on in that respect. Now, we have the prints on the bottom. These prints are called plain impressions. These impressions are taken by placing the fingers simultaneously on this plate and taken and put right on the card in that manner, not rolled, they are just plain, and also with the left hand, [fol. 342] and they are, with the thumb, just placed right down onto it and then picked up and placed where they stay.

Q. Now, Mr. Larbaig, with reference to doing what you call rolling prints, such as you have just described to the jury, in so far as the condition of cleanliness of the hands and the condition of the ink on the hands, will you state to the court and jury what practice you use in that connection?

A: Well, to get a good impression, the hand should be fairly clean.

Q. Now, with reference to what we have determined to be a latent print, a latent print is one that, from your description, is left on some object, and is left there by reason of the construction of the fingers and the oily substance on the fingers, that is correct, isn't it?

A. That is correct.

Q. Depending on the nature of the surface upon which the print is left, and depending upon the condition of the

hands, to some degree, depends the result as to the clarity of the print; is that correct?

A. That is correct.

Q. Will you explain that a little more in detail, please?

A. If the surface that we are attempting to develop a fingerprint from has a certain amount of foreign matter on it, such as dust or grease, or something to that effect, [fol. 343] well, our print that we develop will not be termed as very good, but on a good, clean surface, where this foreign matter does not exist, why, the print will come out, practically as good as the rolled ink impression.

By the Court:

Q. What would be the effect, Mr. Larbaig, of foreign matter on the fingers that touched a surface?

A. If foreign matter on a finger would touch that surface, why, it would not leave an impression in that area that this foreign matter was on, for the reason that—say, the portion of the finger was covered with a slight coat of dust and placed upon this surface, the dust stuck to the finger would absorb that moisture; when placed up there it wouldn't leave anything beyond the point of that dust. In other words, this would only get a portion of the print, or would keep it from going onto that other surface.

By Mr. Roll:

Q. Now, Mr. Larbaig, I do not want to go into all the details of fingerprint classification—I don't want to spend a lot of time on that subject, but will you tell us, generally, what is meant by fingerprint classification?

A. You are referring to the full classification of the full ten fingers, or just of a single print?

The Court: Just take—I think what Mr. Roll is getting at is, in other words, you ultimately arrive, after you have taken a fingerprint, at a sort of fraction, it looks like a [fol. 344] fraction, at any rate, a number, which is a classification number. Generally, what is that based on? In other words, what I am trying to get at, what valuation is given to the separate prints, without going into too much detail?

[fol. 345] A. Well, our first step—right at the present time we have so many different extensions—but our first,

primary step is where—this second one with reference to the whorl pattern that I drew on the board—it all depends upon which one of these ten sections of this card, as to where it appears—wherever they appear in any one of these sections, they have a numerical value, and that will arrive at your primary classification, such as we have a classification that starts at one over one. In that classification there is a known type of this whorl pattern in any one of the ten fingers, that is what we classify as one over one. But if the whorl goes down—appears in any one of these, it will start one over two or one over three, clear up to classification 32. That means 32—you have a whorl in half of the fingers, and we come up to where we have 32 over 32, we have a whorl in every finger.

Q. Let me ask you this question—I think it probably will simplify it. Suppose you had here, Mr. Larbaig—we will take some one roll my prints here in the courtroom, and that my fingerprint card, one like you have got there, was over on file in the police department; now, that card was sent over to the police department, that was rolled here, with no name and nothing on it; what steps would they take to find out whose prints they were over in the police department?

A. It would be classified just as I got through stating, [fol. 346] in what we term as primary, secondary, sub-secondary and final counts, classified in that respect, and search through the file and we arrive at the different patterns as to their valuation, counting of the ridges that intervene between the delta and the core. In this one instance we would count from right to left, and in this one from left to right. Then, the whorls, there is no ridge counting, but it is tracing. We trace from this delta to the delta on the opposite side. If it only had two deltas, we would arrive then as to whether it would mean a certain thing in our classification.

Q. Now, in the example I gave you, the card that was already on file over there in the police department, if I understand from your previous answer, Mr. Larbaig, would be filed over there under a certain classification; is that correct?

A. That is correct.

Q. That is, you would classify the print that was sent over there, look into the file, and then make a comparison between the one in that file and my finger; is that it?

A. That is correct.

Q. When you use the term comparing fingerprints, what do you mean by comparing fingerprints, generally?

A. Well, in the group of ten we compare patterns. When we get down to one print, it is to find similar prints of identity.

[fol. 347] Q. Now, with reference to this situation, Mr. Larbaig, counsel yesterday asked Mr. Ferguson, the gentleman that testified to taking some photographs there of fingerprints, if he made an examination of the body of the deceased for prints. Now, I will ask you if you could get fingerprints off the body of a person?

A. No, not with modern methods, no, sir.

Q. In other words, the only fingerprints you could get off would be the fingerprints of the deceased; is that correct?

A. Yes, sir.

Q. In other words, if I come up and touch you I do not leave any fingerprints on you?

A. No.

Q. Counsel also asked Mr. Ferguson if he made an examination of the coat on the body for prints. Now, can you take an object like a coat, such as I have, some garment, cloth, and take fingerprints off of that?

A. Not a print that could be identified, no sir.

Q. Take an electric cord, similar to the one we have here, the one which is in evidence—may we have that?

The Clerk: Which is it?

Mr. Roll: The electric light cord.

The Court: No. 5.

(Exhibit No. 5 handed to Mr. Roll by the clerk.)

By Mr. Roll:

[fol. 348] Q. People's Exhibit No. 5 If I touch that, can you get a fingerprint off of that?

A. No, sir.

Q. How about an object like this blotter here, can you get a fingerprint off of that?

A. No, sir, you cannot.

Q. Mr. Larbaig, I am going to show you here People's Exhibit No. 20, which has been introduced into evidence. I will ask you to examine People's Exhibit 20 and state whether or not you have seen People's Exhibit 20 before?

A. I have.

[fol. 349] Q. Will you examine People's Exhibit No. 19-A, B and C, the three photographs there, and state whether or not you have seen these before?

A. I have.

Q. Now, Mr. Larbaig, did you cause to be made what we may term some blown-up photographs or enlargements from the negatives of People's Exhibit No. 20?

A. I did.

Q. Do you have those in your possession at this time?

A. They are right on the desk in front of you.

The Court: By the way, while Mr. Roll is getting those, those photographic enlargements are made the same way that a photographer makes an enlargement when you take a little snapshot which we like, a particular picture that we want, and take one for our home from the print?

A. That is true.

By Mr. Roll:

Q. Now, do you have in your possession at this time—we will start with People's Exhibit 19-C—an enlargement of People's Exhibit 19-C?

A. I have.

Mr. Roll: Now, I will ask that this enlargement of People's Exhibit 19-C be marked People's exhibit next in order.

The Court: 24.

By Mr. Roll:

Q. Now, with reference to this enlargement of 19-C, the print which is shown there is what portion of People's [fol. 350] Exhibit 19-C? Will you indicate that, please? Just point out.

A. Is the centermost portion—

Q. If you will just bring that down so we can have it shown to the jury—take the little picture there—if I understand your testimony, this photograph here is an enlargement of this print here in People's Exhibit 19-C; is that correct?

A. That is correct. The dark area is the top.

Q. I will repeat that again. If I understand, this portion I am now pointing to on People's Exhibit 19-C is enlarged and shown in this Exhibit No. 24; is that correct?

A. That is correct.

Q. All right. Now, Mr. Larbaig, did you take and make any enlargements of either People's Exhibit 22 or People's Exhibit 23?

A. I had one of the impressions of People's Exhibit 22 enlarged.

Q. Do you have that picture with you?

A. I have.

Q. May I see that one, please?

(Witness hands Mr. Roll a picture.)

Mr. Roll: I will ask that that be marked People's exhibit next in order.

The Court: 25.

By Mr. Roll:

Q. And of what finger—this shown in People's Exhibit [fol. 351] 25 is an enlargement taken from this card here?

A. It is the center one in the upper row.

Q. This photograph here is an enlargement of this finger of the right hand; is that correct?

A. Yes.

Q. This is one of the rolled impressions that you took of the defendant, that you testified concerning?

A. That is correct.

The Court: Well, while we are at it, which finger it is?

A. It is the right middle finger.

By Mr. Roll:

Q. This finger here (indicating)?

A. That is correct.

Q. Now, Mr. Larbaig, after making these enlargements, People's Exhibit 25,—after these enlargements were made, People's Exhibits 24 and 25—withdraw that. Have you made a comparison, Mr. Larbaig, between the print which is exemplified by People's Exhibit 19-C, that being the print that Mr. Ferguson testified was on the inside of the garbage door—

Mr. Roll: May I have that door, please?

(Exhibit referred to handed to Mr. Roll.)

Q. My recollection is that Mr. Ferguson testified that People's Exhibit 19-C is a photograph of this finger print

on the door, which has been marked in evidence. Now, I will ask you—

[fol. 352] The Court: The inside metal portion of the door.

Mr. Roll: Yes, your Honor.

Q. I will now ask you if you have made a comparison between that fingerprint which is exemplified by the fingerprint on Exhibit 19-C and any fingerprint which appears upon Exhibit 22, being the fingerprint card which you rolled of the defendant on the 31st day of August, 1944, at 2 p. m.

A. I did.

Q. What conclusion did you come to after making that comparison?

A. In my opinion, the print on the photograph marked 19-C and one of the prints on People's Exhibit 22 were both made by the same finger, which is the right middle finger of the defendant, Adamson.

Q. Now, in order to be able to present this matter to the court and jury, did you cause to be prepared these enlargements, People's Exhibit 25 and People's Exhibit 24, of these two fingers that you have just testified concerning?

A. I did.

Q. And I notice on these two prepared ones you have some red lines. Will you indicate just generally, first, what the purpose of the red lines is?

A. The red lines are pointing out the points of identity, similar points of identity. They are marked out on both, [fol. 353] the enlargement of the rolled ink impression and the one print that was photographed on the door, the marks, which are fifteen in number, indicating fifteen points of similarity in these two prints.

Q. Now, in fingerprint work, when you are making a comparison of one known print and one unknown print, before you come to the conclusion that they are the prints of the same individual, how many points of identity, under the American system, are necessary, a minimum?

A. Well, the modern, up-to-date book of today says it should be at least twelve, ten to twelve.

Q. From ten to twelve?

A. Yes.

Q. You have on this comparison, putting it in red ink, fifteen; is that correct?

A. That is correct.

Q. At there, without going into some of the others, if an individual were to stop and make an additional study, would there be some other additional points of identity?

A. There are additional—

Mr. Safer: Just a minute. Unless he has made an additional study, that calls for a conclusion.

The Court: May I have the question?

(Question read.)

The Court: I think the question should be reframed. Sustained.

[fol. 35] By Mr. Roll:

Q. Are there additional points besides the fifteen?

A. There are.

Q. You come down here—I will hold one and you hold the other, and point out to the jury, as best you can—I will hold one and you hold the other—hold it up so the jury can see—which one do I hold in my hand?

A. That is an enlargement of the rolled ink impressions that I took of the defendant. The points of identity are marked in the same way on each side of the prints; I have them numbered. Each one indicates what is being placed there in the ridge area. Point No. 1 is a forking ridge, meaning that one solid ridge splits and then goes on its own course.

Q. This (indicating) is what you are indicating when you are speaking of that; is that right?

A. That is right.

Q. Right at this point, where you call it the forking of a ridge, is that evident in both of these exhibits which we have here in front of the jury?

A. Yes.

Q. Now, come down to No. 2. What does No. 2 show?

A. No. 2 shows the same thing, but it is inverted, the forking of a ridge. It is headed down in the other direction.

Q. Just bring that down here so we can see. Now, in [fol 35] this No. 1, you called that the forking of the ridge; is that correct?

A. That is right.

Q. The part I am indicating here is point and that same point—

A. The same point over on the righthand side.

Q. No. 2?

A. No. 2 is the central area, and that is inverted, forking of the ridge.

Q. All right, No. 3. Take No. 3, down in that section, and tell the jury what it is.

A. Point No. 3 is an ending of a ridge in between two solid ridges. It is an abrupt ending. Point No. 4—May I still go a step further on that one, ending in a downward direction.

Q. All right, point No. 4.

A. Point No. 4 is another abrupt ending ridge, ending in a downward direction; point No. 5 is also an abrupt ending ridge on the lefthand side of the pattern; it is also an abrupt ending ridge. One ridge away from that is also another abrupt ending ridge marked No. 6; point No. 7 is a bifurcation in the upward direction; point No. 8 is an abrupt ending ridge; point No. 9 is also an ending ridge. Point No. 10 is—

The Court: May I suggest something, gentlemen?

Mr. Roll: Yes, your Honor.

[fol. 356] The Court: I realize it is impossible to have the entire twelve jurors see the entire transaction. I wonder whether you could not give the ladies on the end a little break there and show them one or two of those items.

Mr. Roll: Move farther down here. Start with point No. 10, if you will.

A. Point No. 10 is an ending ridge, ending in the upward position.

Q. That is shown in both of the pictures?

A. Both of these; they are identically marked.

Q. Point No. 11?

A. Point No. 11 is an ending ridge, ending in the upward direction.

Q. Point No. 12?

A. Point No. 12 is a ridge, an ending ridge, in the upward direction.

Q. 13?

A. Point No. 13 is an ending ridge towards the center of the pattern in an upward direction.

Q. Point No. 14?

A. Point No. 14 is a bifurcation or a forking of the ridge in the center portion of the pattern, inverted.

Q. Now, you may have covered the reason for your opinion in going over these various points there, the fourteen points, but will you tell us again the reason for your opinion, when you said that the fingerprint, the photograph of the {fol. 357} one on the door, the back side of the door, of the right middle finger is the same print of the fingerprint card, the right middle finger of the defendant? Will you give us the reasons?

Mr. Safier: Just a moment. May I have that question read?

The Court: He asked for the reasons for his opinion.

Mr. Safier: Oh, I see.

A. My reason is mainly of these fifteen points of similarity that I have marked, some on the bottom side, some on the left, some on top and some on the right side, of all of these points of similarity in relation to one another.

By Mr. Roll:

Q. Now, with reference to the one which is the enlargement of the photograph which was made of the door, that is People's Exhibit No. 24, in so far as some of the area shown in there, and some of the ridges, that is not as clear as the photograph that represents the enlargement of the rolled right middle fingerprint, which is exemplified by People's Exhibit No. 25. Will you explain, in your opinion, the reason for the differences there of those two prints?

A. People's 25, the rolled inked impression is taken under ideal conditions, the finger is fairly clean and it is just rolled in this ink, but rolled on white paper, and it is under very ideal conditions and the print turns out fairly well, [fol. 358] but on the latent print developed on the back of that door you have foreign matter to contend with, which shows a darkened area on the top of this print which may have been grease of some kind or some foreign matter, and when the powder was applied it adhered to all that surface. There is also light surfaces in there where there probably wasn't much pressure of the finger applied there for the print appears dimmer.

Q. Mr. Larbaig, we have referred considerably here to

the several points of identity. What do you mean when you say "points of identity"?

A. Well, there are similar points of identity, which means that they are identical.

Q. In other words, the same thing shows on each of the two pictures?

A. The same thing shows on each picture.

[fol. 359] Q. Now, directing your attention to one of the other photographs which Mr. Ferguson testified concerning, being People's Exhibit No. 19-A, I believe that has been described as the outside of the inner garbage door, about 6 inches from the lower side. Did you cause to be made an enlargement of People's Exhibit 19-A?

A. I did.

Q. And do you have that here with you?

A. I have.

Q. And did you cause to be made—withdraw that. I now offer this as People's next exhibit, if the court please.

The Court: 26.

Mr. Roll: 26?

The Court: For identification.

By Mr. Roll:

Q. Now, did you cause to be made an enlargement of some fingerprints from the fingerprint card that you rolled of the defendant, People's Exhibit No. 22?

A. I did.

Q. And do you have that with you?

A. I have.

Mr. Roll: May this be marked People's Exhibit No. 27?

The Court: 27.

By Mr. Roll:

Q. I notice on People's Exhibit 26, on the righthand side, so the jury can see what I am indicating when I point, there appears to be two prints and then on the lefthand side a portion of a print down at the bottom and some up at the [fol. 360] top; is that correct?

A. That is correct.

Q. On People's Exhibit 27, being the one that you say is the enlargement of the fingerprint card that you rolled of the defendant, there are two fingerprints on that enlargement; is that correct?

A. That is correct. They represent the last two fingers in the upper row which represent the right ring and little finger.

Q. In other words, People's Exhibit No. 27 represents what again, now?

A. The right ring and little finger.

Q. All right. Now, Mr. Larbaig, I am going to ask you if you made any comparison between People's Exhibit No. 19-A and—that is the fingerprints there shown—and the fingerprints which appear on People's Exhibit No. 22?

A. I did.

Q. And what conclusion did you come to after making that comparison?

A. In my opinion the prints on photograph marked 19-A, and two of the prints on People's 22 are both made by the same fingers, which are the right ring and little finger of the defendant Adamson.

Q. Now, will you again indicate which two fingers on the card that is so the jury can see?

A. The next to the last and the last one in the upper [fol. 361] row.

Q. And when I say "a card", I refer to People's Exhibit No. 22. Now, in this instance did you prepare enlargements—withdraw that. You have testified, I believe, you prepared enlargements. Did you do this for the purpose of illustrating to the jury in this situation, points of identity?

A. I have.

Q. And on People's Exhibit 27 and 26, Mr. Larbaig, will you state how many points of identity you have numbered there? Just the total number is all I ask you for now.

A. There are fifteen in total.

Q. Are there more there that you have not actually numbered?

A. There are.

Q. Now, Mr. Larbaig, so that there may not be any question arise later on, on People's Exhibit 26 and People's Exhibit 27, I will hold this up,—maybe counsel would like to look at this also—is this photograph here, where you made your comparison and your opinion, is that the same finger that is shown here, the first, the one here center?

A. It is the one shown on the left or in the center of these other two.

Q. In other words, with reference to People's Exhibits 26 and 27, the picture shown, that is the print shown on the bottom side of 27 is the one approximately in the middle of 26 and the one shown on the righthand side of 27 is the [fol. 362] righthand one here; is that correct?

A. That is correct.

Q. I am not going to ask you to go through all the 15 points, Mr. Larbaig, but if you will take about two on this end of the jury, and two on that end of the jury in these prints, just pick out any two you desire, you call the number and I will point to it.

A. I have ten points of identity marked in the one on the righthand side. Point No. 1 is an abrupt ending ridge, ending in an upward direction.

Q. All right, now let's go on down here. Take point No. 1 again.

A. Point No. 1 is an ending ridge going in an upward direction, which is marked with the identical spot with the others.

Q. All right, take some other point and we will go down to this end.

A. Take point No. 10 on this same exhibit is an ending ridge; it is clear in the opposite direction, pointing down.

Mr. Roll: I will now offer into evidence, if the court please, these enlargements which have been previously testified concerning.

The Court: 24, 25, 26 and 27 are marked in evidence.

By Mr. Roll:

Q. I think that leaves us then, Mr. Larbaig, with 19-B, is [fol. 363] that correct? I think we have discussed the other two.

A. That is correct.

Q. Mr. Larbaig, did you make an enlargement of 19-B?

A. I did.

Mr. Roll: I will try this over again: The last print which Mr. Larbaig testified concerning, I believe, was indicated here by the letter A on the door, is that the one which you showed the jury?

A. That is correct.

Q. The one you are now going to testify concerning was indicated by the red "B" on the door?

A. That is correct.

[fol. 364] Mr. Roll: May this enlargement of People's Exhibit No. 19-B be marked 28?

The Court: Marked 28 for identification.

By Mr. Roll:

Q. Did you make an enlargement, Mr. Larbaig, of some of the fingers which are exemplified by People's Exhibit No. 22, being the fingerprints of the defendant which you rolled?

A. I did.

Q. And is this photograph which you now hand me an enlargement of some of the fingers on People's Exhibit 22, the prints you rolled of the defendant?

A. That is correct.

Mr. Roll: May that fingerprint card be marked People's Exhibit No. 29?

The Court: 29. You refer to it as a fingerprint card—

Mr. Roll: I am sorry, your Honor.

The Court: You mean enlargement from the fingerprint card.

Mr. Roll: Yes, your Honor.

The Court: All right.

By Mr. Roll:

Q. Now, Mr. Larbaig, with reference to People's Exhibit 22, we will take that one first; will you hold that up there, sir,—I will hold that, and will you hold the fingerprint card, People's 22, and indicate which pictures you are showing to be enlarged?

A. These three at the bottom with this number appearing [fol. 365] underneath.

Q. C-2554?

A. That is correct.

Q. And which hand is that, sir?

A. That represents the left index, middle and ring finger.

Q. Which hand?

A. The left hand.

Q. The left hand. All right. Now, did you make comparison, Mr. Larbaig, between the fingerprints which are depicted by 19-B, the one taken off the door, and the fingerprint card of the defendant, People's Exhibit 22?

A. I did.

Q. And what opinion did you come to concerning those fingerprints?

A. In my opinion, the fingerprints on photograph marked People's 19-B and several of the fingerprints on People's marked 22 are both made by the same fingers which are the left, index, middle, ring of the defendant, Adamson.

Q. Now, in order to illustrate that situation, you again made these enlargements; is that correct?

A. I did.

Q. On these enlargements you have made points of comparison; is that true?

A. I have.

Q. Now, we might again step down to the front of the [fol. 366] jury, Mr. Larbaig, hold these two exhibits—I have 29 and you have 28—so that we may have the record clear, that one I hold in my hand is the one from the fingerprint card that you rolled?

A. That is right.

Q. And this one is the enlargement of the one on the front of the door, at least one of them?

A. That is correct.

Q. Now, let's start over here on the righthand side of this one fingerprint over here. Now, I notice you haven't any points of identity marked on that. You are, I take it, not testifying that that particular print—there is nothing shown on People's Exhibit 28 to state that that is the same finger that appears on People's Exhibit 29?

A. That is true. I have it marked out in relation to the scar only.

Q. Mr. Larbaig, what is known as the smudging of a print?

A. Well, the main idea of the smudged print is a print that has been placed on a surface and then moved, causing it to smear, and when that is developed with the powder it will appear as just one black smear. That is termed as a smudged print.

Q. Now, what is known as slippage?

A. Yes, slippage.

Q. You can illustrate it.

[fol. 367] A. In the case of a door, a person lifting the door, you have a certain movement in this area of the finger when lifting a weight, which will cause this portion of your finger to roll, and you have to put quite a bit of pressure on there to keep it from doing that, and if the weight that you are lifting is not so heavy, why, you will have this portion

of the finger roll; which will cause what he terms a slippage.

Q. Well, is some of that done here?

A. Some of this, on these prints here, is shown as that, and also superimposed. In other words, there are portions of it just placed right over the top of the other, which causes it to be superimposed.

Q. That is People's Exhibit 28?

A. That is correct.

Q. We will start here again on the lefthand side—we had better start over here and then we will come on down. Will you pick out some points there, Mr. Larbaig, of the lefthand side?

A. Starting on the lefthand side?

Q. Yes.

A. On the print I have seven points of identical identity marked out, one referring to a small scar at the white area on—

Q. 29?

A. —29, and also shows as a white area in People's Exhibit 28. Point No. 1 shows as an abrupt ending ridge, ending in a downward direction.

Q. Now, if you want to come on down here, we can go over that scar again.

A. (Exhibiting to the jury) That light area shows injury to the ridge area which also appears on this one here as a light area.

Q. Now, if you want to take some other points, we will take the scar down here so they can see that.

A. The light area which appears on here is the scar, and also appears at point No. 7 on People's Exhibit No. 28. It also has six points of identity marked out as ridge characteristics that are similar.

Q. Now, do you want to take some other point down at this end?

A. Point No. 3 is a forking of the ridge in an upward direction. That is marked by point No. 3.

Q. And, I take it, without going through all of this matter again, Mr. Larbaig, you can point out with reference to the next point you have marked now?

A. There are eleven points of identity marked out on the print.

Q. With reference to the five you have marked out one on the left side. Are there more that you could point out?

A. There are.

Q. As many as ten altogether?
[fol. 369] A. yes.

The Court: This might be a good place to take our recess, Mr. Roll. We will take our morning recess. Ladies and gentleman, keep in mind the admonition heretofore given not to talk about the case or form or express any opinion.

(Short recess.)

By Mr. Roll:

Q. Now, with reference to the last exhibit which you testified concerning, Mr. Larbaig, will you give us your reason for your opinion that the prints which are shown by the photographs taken from the door and the prints that were—the portion of the prints rolled of this defendant, are prints of the one and the same person? Will you give us your reasons for that?

A. My reasons, the points of identity appearing in these positions with relation to one another, also with these scars appearing in the fingers, corresponding with those on the rolled ink impressions.

The Court: May I interrupt just a moment, Mr. Roll?

Mr. Roll: Yes.

(Short interruption on other court business.)

The Court: You may proceed, Mr. Roll.

By Mr. Roll:

Q. Now, Mr. Larbaig, with reference to the fingerprints of different individuals, that is, two different people; so far as known, have two different persons ever had identical fingerprints?

[fol. 370] Mr. Safier: Objected to as calling for a conclusion and opinion of the witness.

The Court: Overruled.

A. No, sir.

By Mr. Roll:

Q. Go ahead and explain that a little bit, if you will, please.

A. There is a possibility of one, two or maybe three points of similar identity. In other words, similar points appearing in a certain small area. But in comparing, like

I have marked out, fifteen in different portions of those patterns, and having similar points of identity appear in the areas all the way around of the patterns, I would say that it would be impossible to find similar points of identity on two different prints.

Q. With reference, Mr. Larbaig, to the diagrams which you put on there at the outset, with reference particularly to the loop and the whorl, what you have intended to depict there is merely what we call in those two—of the four types, the loop and the whorl, a portion of what we call the pattern area; is that correct?

A. That is correct.

Q. That is, around the center of the finger above the joint, you haven't gone out, as you have on the arch or the tented arch?

A. I have not.

Q. Now, so we can have it reproduced later on, will you [fol. 371] come down here and with this chalk—I have attempted to put two rectangles on the board for the purpose of indicating the back or metal side of the door and the front side of the door. Now, take one little diagram there, if you will, and approximately show where this print, which you have testified to, was up in here.

(Witness draws on backboard.)

Q. Now, which print and of what hand, according to your comparison, is depicted there?

A. I identify the one on the back side of the door or metal, as the right middle finger.

Q. All right. Now, taking the other side, will you do the same thing with reference to the front side of the door, show what fingers of the defendant you identify as being on the front side?

A. These representing the hinges and this the knob on the door.

Q. You have got the hinges, I think, in the wrong place.

A. Yes.

(Witness drawing on diagram.)

That is the left index, middle and ring fingers.

Now, take the other side.

A. I have identified it as the right ring and little finger of the right hand.

Mr. Roll: You may cross examine.

[fol. 372] Cross examination.

By Mr. Safier:

Q. Mr. Larbaig, you are connected with the Los Angeles Police Department; is that correct?

A. That is correct.

Q. How long did you say you had been with the Los Angeles Police Department?

A. 19 years and ten months.

Q. Had you done any fingerprint work prior to the time you became associated with the Los Angeles Police Department?

A. I did not.

Q. What courses did you state on direct examination you took in fingerprint study? You testified to some courses, did you not?

A. Well, no, not any specific course. I have taken a short course by the Federal Bureau of Investigation that lasted over the period of a week.

Q. A week?

A. Yes.

Q. When did you take that course?

A. Not very long ago. It was just—I would say it has been within the last six months.

Q. Are there any regular college courses or university courses given in fingerprint study?

A. No. There is a class—I think the lieutenant here with the Sheriff's office, conducted schools, and some of the [fol. 373] other—the lieutenant in our department taught school at the L. A. City College.

Q. Is there a course in fingerprinting at the L. A. City College?

A. There was, but I don't think there is at the present time.

Q. You never took any of these college or university courses, did you?

A. No, sir.

The Court: Just a minute. Let us find out if there are college or university courses, first.

Mr. Safier: He has testified already to one at the L. A. City College, your Honor.

Q: Are there any other college or university courses in fingerprint study, fingerprint work?

A. There is not, to my knowledge, no. Mostly all of these courses are the fundamentals of classification, and I have been with that for seven or eight years, and searching fingerprints, for that amount of time.

Q. All your work is done on the police or prosecution side, is it not?

A. That is true.

Q. Now, it is a fact, is it not, that given two fingerprints for comparison that experts may differ as to whether they compare, as to whether or not they were from the same finger?

A. Yes, that is possible.

[fol. 374] Q. Fingerprint comparison and identification is, after all, a checking of points of similarity, is it not?

A. That is true.

Q. Now, are the patterns that you have indicated on the blackboard, loop, whorl, arch and tented arch, the only four patterns that there are?

A. Well, in that division, yes. But each one of them have different patterns, but they are all considered—as for example, the whorl, that second one that I have there, there is quite a few whorl pattern prints.

Q. Isn't it a fact that there is another distinct pattern called the composite?

A. No, the composite, like I mentioned before, it is considered a whorl pattern. But it is composed of one or more patterns, but we call it the whorl.

Q. Will you explain the difference between what are known as central pocket loops, lateral pocket loops, twinned loops and accidentals?

A. I understood three of them, but I didn't the fourth. Would you repeat that?

Q. Central—tell us, first, what a central pocket loop is?

A. The central pocket loop is—it has the same formation as the ones on the left over there, but it has a tendency to have a small whorl up in the central portion where the core is, and it is called a central pocket loop. As far as [fol. 375] our classification is concerned, we still call it a whorl.

Q. What are lateral pocket loops?

A. A lateral pocket loop is one that has—the pattern goes over a certain area.

Q. What are twinned loops?

A. I don't understand that portion.

Q. Twinned, t-w-i-n-n-e-d loops?

A. No, they call them twin, t-w-i-n.

Q. All right, twin loops?

A. You have two loops—where you have two distinct loops in the pattern they are called twin loops. You have one going down and another one in the upper portion; you have twin loops; that is in the whorl pattern also.

[fol. 376] Q. What are accidental loops?

A. Your accidentals are just what you mentioned a minute ago, the composite—no, they are not. Pardon me. An accidental is a freakish pattern, such as may include two different or distinct patterns in one area, and it is called an accidental. I think it is often termed the same as a composite, carrying one or more patterns.

Q. How many different systems of classification are there in use today in the United States?

A. In the United States?

Q. Yes.

A. Well, I think the United States rely strictly—you mean to the classification or of the full set of fingers?

Q. Well, you said there are two major classifications; is that the single print and the full hand?

The Court: In other words, generally, which one is in general use?

A. The one in general use in classifying the ten fingers is the Henry System.

The Court: Now, with reference to the Larson or single classification, is that universally used or not?

A. Well, I think the universal use for single prints is Batley.

By Mr. Safier:

Q. What systems do the Los Angeles Police use?

A. We use a combination of the Larson, Batley and [fol. 377] Captain—ex-Capt. Barlow. We have a set-up all our own, where we have got three of them combined.

Q. That would be, then, a system that would be peculiar to your own Police Department and that is not in common use, as far as you know, anywhere else in the United States?

A. It is in classification of singles, but it is strictly—but it is mostly strictly Batley.

Q. When a man's fingerprints are taken by the Los Angeles Police Department, are they in every case immediately put into your classification system?

A. You still refer to this set here or the singles?

Q. No, I am not referring to either one. Suppose a man were brought into the Los Angeles Police Department, booked and his fingerprints taken, would they be forthwith put into your classification system?

A. They are brought into the Record and Identification Division of the Los Angeles Police Department and technical clerks classify them, search them through our files, and if they are not found to have a prior record, they are then filed in our files.

Q. I see. Now, how long will it take to strike that. Assuming you had the fingerprints of somebody that was brought in the Police Department and booked and fingerprinted, how long would it take to find his prints in your system if you had them in your system?

Mr. Roll: Just a minute. Are you talking about from [fol. 378] the fingerprint classification card or talking about something else?

The Court: I think counsel means, supposing Joe Doakes was fingerprinted, how long would it take him to find in their files whether he had previously been fingerprinted, by the same department. Is that the question?

Mr. Safier: That is the question.

The Court: All right.

A. Upon starting in to classify the fingerprints of a card similar to this, why, the average time it takes to search them, to find out if he has a prior record in there, I would say is three minutes.

By Mr. Safier:

Q. I see. Now, you, I believe you testified on direct examination that the fingerprint is made by the impression of the ridges, did you not?

A. Of the ridges?

Q. Is that correct?

A. That is correct.

Q. What substance is it that the ridges leave on the surface that makes the print?

A. It is perspiration through the sweat glands or pores that are in your ridges and the natural oily substance that is secreted by your body.

Q. Have you ever made any study of those oily substances to determine just what it was chemically?

A. I have not.

[fol. 379] Q. Now, I understand from your testimony that a fingerprint cannot be left on a human body?

A. That is true. On skin?

Q. On skin.

A. That is true.

Q. Skin will not take a print?

A. No, sir.

Q. How about wearing apparel?

A. That is possible, to develop a smudge where it had been handled, but not a print that could be identified.

Q. You could not get a print that could be identified off of wearing apparel?

A. In relation to the texture of the material or anything else. The fine material will show maybe a little bit more than a coarse material. The material itself, you can see where it has been handled.

The Court: Well, in the days when the men wore what we used to call hardboiled shirts, very stiff bosoms, and very stiff collars, what would you say about that?

A. That would be possible.

By Mr. Safier:

Q. Can you get a fingerprint off of leather?

A. Certain kinds of leather, yes. Patent leather is the most prominent.

Q. Did you yourself, Mr. Larbaig, photograph any prints from the door that is in evidence here?

[fol. 380] A. Photograph them?

Q. Yes.

A. No, sir, I did not.

Q. Did you make the enlargements from those photographs which you have with you here?

A. No; they were made in my presence.

Q. All you did was make an examination and comparison from those enlargements; is that correct?

A. That is correct.

The Court: Well, did you examine the unenlarged prints, in other words, the normal prints, and the lifted prints also?

A. Primarily my examination was made from the small ones.

The Court: In other words, the enlarged photographs are made really for court use so that everybody does not have to use a magnifying glass?

A. That is true.

By Mr. Safier:

Q. Now, how many points of similarity would you have to find in examining and comparing two fingerprints before you would make an identification that they came from the same finger?

A. For myself, I would be satisfied if the points were exceptional or odd, I would satisfy myself if there were just three or four.

Q. I see. Now, is there a difference of opinion on that [fol. 381] point among experts? Do some experts require a greater number of points of similarity before making an identification?

A. Well, like I said, if the points were odd in characteristics and everything else, I would be satisfied with four, but if there were no odd characteristics, just your natural flow of ridges ending, why, I would rely on ten to twelve points of similarity on different sides and portions of the print.

Q. All right, now, is it or is it not a fact that you might find ten or twelve points of similarity on two prints taken from different persons?

A. No, sir.

Q. You would not find that many?

A. No, sir.

Q. What would be the greatest number of points of similarity that you might find on prints from different people?

A. Two, and possibly three.

Q. Could it be four?

A. I do not believe so.

Q. Is three the greatest number that you have ever, yourself, seen?

A. I do not believe I have seen three.

Q. I see. Now, when you see three points of similarity, do you mean three unusual points of similarity?
[fol. 382] A. Well, three points of similarity in one small area where you would probably have three ridges ending in the same place, in the same space.

Q. Now, assuming one individual; do the patterns of all the fingers of that particular individual fall into the same class?

A. They do not.

Q. Well, might two, three or four of them fall into one class and the rest into another class?

A. No. You are apt to find any of them, you might find one person with all these on their hands on one time.

Q. You might find a person whose prints from each finger fall into one class, might you?

A. You might have loop, whorls, arch and tented arch all on the same hand.

Q. All on the same hand. Now, if you found as many as eight or ten points of similarity in comparing two prints, you would identify it as being from the same finger regardless of the number of points that were not similar; is that true?

A. Well, if they appeared in relation to one another from different sides of the prints, I would be satisfied in my own judgment it belonged to the same party.

Q. And, regardless of how many points you found that were not similar, you would attribute that to some foreign substance or some other cause?

[fol. 383] A. It might be attributed to that, yes.

Q. Well, you would attribute it to something like that—

Mr. Roll: Just a moment. I am going to object to that as a hypothetical question.

Mr. Safier: All right, I withdraw that question.

The Court: I think I get the point counsel is driving at. You may follow the subject up.

Mr. Roll: I have no objection to his following the subject, but the way he was going at it with the last question, I do object to.

By Mr. Safier:

Q. If you take two prints of the same finger and have them rolled, both rolled prints, under ideal conditions, Mr. Larbaig, they would be identical, would they not, in

every respect?

A. Well, no. I don't think you could roll two prints and have them identical.

Q. If they were both done under the same conditions?

A. No.

Q. Both done under similar conditions?

A. I still don't think you could.

Q. What is the reason for that?

A. Well, in the act of rolling your prints you might get more ink on one than you did the other, and you might roll it just a little fraction farther than you would the other. It would be impossible to roll two prints, one right after the other, and get them exactly alike. You might [fol. 384] get one a little wider than the other, and more tip on one than you did the other, or more the lower portion.

The Court: How about pressure?

A. And pressure also.

By Mr. Safier:

Q. Now, assuming one good rolled print and one latent print, if you found in comparison with those prints that you had, say, four points of similarity and perhaps ten or twelve points that did not appear to be similar, you would attribute all of those points that did not appear to be similar to some foreign substance being on the hand or something of that sort, would you not?

A. Well, in any—there are several things that could contribute to the dissimilarities; not having enough of the print, the foreign matter, as you say,—

Q. Well, as long as you have found four points of similarity you would find some way of explaining away the points of dissimilarity, wouldn't you?

A. No, if those four points of identity were outstanding and peculiar, I would be satisfied, but if they were not and there were, as you say, twelve or fourteen points of dissimilarity, I would not make up my mind that they were made by one and the same person.

Q. I see. I will ask you to look at People's Exhibits 24 and 25 and tell me if you find any points of dissimilarity.

[fol. 385] A. Yes, there are points of dissimilarity.

Q. Will you state what they are and point them out to the jury?

The Court: Do you want to step down to the jury?

A. First of all, in People's 25, the rolled ink impression is almost twice as wide. That is on account of the rolled ink impression, the fingerprints removed from the door is a print that has just been placed on there and taken off, therefore you won't get this very small area, you don't get the rolled area. That is your first dissimilarity. The print appears in width as very much smaller. It only covers, I would say, one-quarter of the area on the outside that is not included in this print here removed from the door. There is also this dark area at the top which I testified to prior, that indicates some foreign matter on the door, grease or something to that effect, that when those fingerprints are developed on there with this black powder, that the powder will adhere to this portion here and smear that area.

[fol. 386] Also there are lighter streaks through this print appearing in several places that there has not been the pressure put on at those points that there is in some of these other points that were readily developed, but this print here is under ideal conditions, rolled with ink on white paper and you have a direct contrast. Also on this print will appear,—this is developed with black powder, some ridges on this print which may appear along at a certain place or there is possibly some of this powder which has not been—did not come out of that area while brushing will appear to make it look like it was a solid ridge or something like that where they do not appear on this print.

Q. Now, will you point out what is known as the core?

A. The core as on the diagram is your most—centermost portion of that pattern area, the one that comes up in the middle of that, that is your core.

Q. Is it a fact that there is only one core for each finger?

A. In the loop pattern prints, yes, there is one core.

Q. This is a loop pattern print, is it not?

A. Yes.

Q. Now, is it not a fact that the core on these two photographs appear to be different?

A. They appear to be different.

Q. And the core is one of the central points of comparison in examining prints, is it not?

[fol. 387] A. No. It is one of the main points in the classification of a fingerprint for searching, but as far as iden-

tity, is has no more value as to that point as any other point on the card.

Q. On People's 25, on the lefthand side you observe a little white section with a dot in the middle where I am indicating?

A. Yes, that is true.

Q. Can you indicate that on People's 24?

A. I do not believe I can. The element of time between the time that this fingerprint was left on that door and the time this fingerprint was taken, why, anything could have happened.

Q. I see. Now, with reference to all the points on these two photographs that appear to be dissimilar, your explanation is based upon guess and speculation as to the reasons therefor, is it not?

A. That is true. I did not dust the print and therefore I could not tell you.

Q. Now, 28 and 29 go together, do they, Mr. Larbaig? Do these two go together?

A. They do.

Q. I show you People's 28 and 29 and I will ask you if you will point out the points of dissimilarity?

A. Yes, the points of 28 and 29, the prints photographed on the door, the ridges on there—

[fol. 388] Q. Do you want to step down and point it out to the jury?

A. The ridges appearing on this photograph, a photograph from the door appear much different than they do on this photograph here, on account of some portions we have, this area down in low, we have two portions that are superimposed, and also indicates pressure, quite a bit of pressure put on, and also slipping of the finger which I indicated to you people before was a movement of this, and this will not show on these plain impressions placed on that card.

[fol. 389] Q. Examined under the microscope, Mr Larbaig, many other points of dissimilarity could be found?

A. Yes.

Q. In these photographs?

A. Yes, there are quite a few more, on account of the pressure that was applied, which has changed quite a few things in the prints.

Q. Examined under the microscope many other points of dissimilarity could be found between Exhibits 25 and 24?

A. Not so many on that print; that print is a fairly good print.

Q. Other points of dissimilarity could be found, could they not?

A. I think under a glass you could find—not much more than what I have already explained.

Q. Now, People's Exhibits 26 and 27 go together, do they?

A. They do.

Q. Will you point out points of dissimilarity upon these two photographs to the jury, Mr. Larbaig?

A. These are similar to the ones that I just showed the jury, the same thing, pressure and slipping of the fingers, other than that they are the same as these others.

Q. I see. Other points of dissimilarity could be found under a glass as to these Exhibits 26 and 27, could they not?

A. Yes, they could.

Q. Now, did you roll the defendant's prints yourself?
[fol. 390] A. I did.

Q. When?

A. August 31, 1944.

Q. Did you yourself roll his prints prior to that at any time?

A. No, I didn't.

Q. Give me the date upon which you first made an identification of the defendant from the prints taken from the door?

A. I couldn't tell you offhand. I would have to check.

Q. Will you do that during the noon hour?

A. I think Officer Ferguson has it in an envelope.

Mr. Safier: I have no further questions.

Mr. Roll: Well, will that help you any in answering that question he asked (handing a document to the witness)?

A. Yes, sir, it will.

By Mr. Safier:

Q. What was the date when you first made an identification of these prints taken from the door, compared with the defendant's prints?

A. I identified these prints as belonging to Adamson on August 21, 1944.

Q. That is the same date you rolled these prints?

A. No, I rolled these prints ten days later.

Q. You rolled these prints ten days later?

A. They were identified on August 21, 1944 by me.

Q. I see. May I see that just a minute? Now, you can [fol. 391] answer this yes or no, Mr. Larbaig—

Mr. Roll: Counsel, I think possibly we might approach the bench before you go into that further. If you are going into anything further we are going to get into some other matters.

(Conference at bench between court and counsel out of the hearing of the jurors.)

The Court: Is this all with this particular witness?

Mr. Safier: That will be all, your Honor, at the present time.

The Court: I think before we call another witness, rather than to break in the middle of the witness' testimony, we will take a recess a few minutes early. The jury keep in mind you are not to talk about the case or form or express any opinion. We will take a recess until 1:45 this afternoon.

(Whereupon a recess was taken until 1:45 o'clock p. m. of the same day, Friday, November 17, 1944.)

[fol. 392] Friday, November 17, 1944; 1:45 O'Clock P. M.

The Court: The record will show the jury, counsel and defendant present. You may proceed.

Mr. Safier: Mr. Larbaig will not be back?

Mr. Roll: You excused him.

Mr. Safier: Well, I may want to ask him one question before we rest.

Mr. Roll: Will you take the stand?

CATHERINE T. MAY, called as a witness on behalf of the People, was duly sworn and testified as follows:

The Clerk: What is your name, please?

A. Catherine T. May.

The Clerk: Miss or Mrs.?

A. Mrs.

Direct examination:

By Mr. Roll:

Q. Your full name, please?

A. Mrs. Catherine T. May.

Mr. Roll: Do you want to pull the microphone over?
That's fine, Mrs. May.

Q. Mrs. May, where do you live at the present time?

A. 146 West 87th Street.

[fol. 393] Q. Directing your attention to the month of July, 1944; where were you living during that month?

A. 744 South Catalina Street.

Q. In what apartment were you living, Mrs. May?

A. 409.

Q. Where is that with reference to 410?

A. Directly across the hall.

Q. Were you residing in that apartment alone?

A. Yes, I was.

Q. I understand your husband is in the armed services?

A. He is in the Navy.

Q. And he was at that time, is that correct?

A. Yes.

Q. About how long have you lived there in apartment 409?

A. Since the preceding August.

Mr. Safier: I am sorry, I did not hear the last.

(Answer read.)

By Mr. Roll:

Q. Were you at home, Mrs. May, on the date of Monday the 24th day of July, 1944?

A. Yes, I was.

Q. Now, this is the apartment that you occupied at that time, is that a fair representation of it?

A. That is right.

Q. With reference to the bed which is shown there in apartment 409 on People's Exhibit No. 1; is that the approximate location of the bed when it is out of the closet, [fol. 394] and down?

A. Yes, it is.

Q. And with reference to this article of furniture which is shown in the living room of apartment 409, People's Exhibit J, which is marked "divan," did you have a divan of about that size and proportion there in that location on the 24th of July, 1944?

A. I did.

Q. Now, along in the afternoon of the 24th—withdraw that. Did you know Mrs. Blauvelt?

A. I knew her to speak to her in the hall; I didn't know her well.

Q. By that I take it you had a speaking acquaintance is that correct?

A. Yes.

Q. Now, directing your attention to the daytime there of the 24th after, we will say, 12 o'clock, did you hear anything unusual there in the way of any noises or sounds?

A. Well, early in the afternoon I heard—

Q. You will have to keep your voice up.

A. Early in the afternoon I heard a hammering in the hallway, and still a little later I thought someone was knocking at my door, my door kind of rattled and I listened again and heard another sound, but I knew definitely it was not my door anyone was knocking at, and still later in the afternoon, about 3:30 I heard—

[fol. 395] Q. Wait a minute. Now, let me ask you with reference to this hammering: Can you fix that approximately, what time the noise that sounded like a hammer to you?

A. Well, I could not say the definite time, but I would say it was, oh, perhaps an hour before 3:30 when I heard Mrs. Blauvelt, an hour or an hour and a half.

Q. Now, you started to mention approximately at 3:30 you heard something. What did you hear at approximately 3:30?

A. I heard Mrs. Blauvelt say "What do you want of me."

Q. Where were you in your apartment at that time, do you remember?

A. I was on the divan.

Q. On the divan?

A. Yes.

Q. Did you hear any audible words in reply to Mrs. Blauvelt's voice saying "What do you want of me"?

A. No, I just heard a low mumble; I could not distinguish what it was.

Q. You say you heard a low mumble but you could not distinguish the words?

A. No, I could not distinguish the words.

Q. Can you describe the tone of Mrs. Blauvelt's voice?

A. She sounded frightened; her voice did not sound natural.

Q. What, after that, was the next thing that you recall [fol. 396] hearing?

A. Well, later that evening I heard a key used in the lock of her door and, still later, I heard someone come out of her door and go down the back stairway.

Q. Now, is there any way you can fix the time of these two instances?

A. Well, I can't tell definitely. I would say it was after 6:30 and before 8, or around 8 that I heard the key used, but it was later than that that I heard someone going down the back stairway.

Q. And when you say you heard a key used, can you describe a little more what you mean by that?

A. Well, just as if someone used a key in the lock and turned the lock.

Q. Where were you at that time, do you remember?

A. I was in bed.

Q. You were in bed?

A. Yes.

Q. With reference to the bed, I will ask you—upon the diagram that depicts the approximate location of the bed, where was the head of the bed with reference to the hallway? Was it towards the hallway side or towards the divan side?

A. Towards the hallway side.

[fol. 397] Q. Where were you lying on the bed? Where was your head?

A. My head was towards the closet door, where the bed goes into the closet.

Q. That would be towards the bottom of the diagram, that diagram that is on the board there?

A. Yes.

Q. Now, did you get up and go out yourself or not?

A. No, I didn't.

Q. Now, going back to the first instance there where you heard Mrs. Blauvelt's voice, heard her say, "What do you want of me?"—you weren't able to distinguish any

other words? I understood you to say it sounded like a low mumble?

A. Yes.

Q. Now, with reference to that low mumble, would you say that that low mumble was Mrs. Blauvelt's voice or a different voice?

A. That I couldn't tell. It didn't sound like—I couldn't tell whether it was a man's or a woman's voice even.

Mr. Roll: You may cross examine.

Cross examination.

By Mr. Safier:

Q. Mrs. May, the events to which you have testified on direct examination occurred on what day?

[fol. 398] A. Monday, the 24th of July.

Q. How do you fix that as being the date?

A. Well, after the murder occurred we, of course, noticed the day and the date.

Q. You thought back over those events and fixed it in that fashion?

A. We didn't have to think back; she was found on Tuesday.

Mr. Roll: I did not hear that.

(Answer read.)

By Mr. Safier:

Q. You knew it was the preceding day that you had heard these noises; is that right?

A. Yes.

Q. Now, had you been out of your apartment on the morning of July 24th?

A. How early in the morning?

Q. Well, had you been out of your apartment that morning at all?

A. I didn't go home until about 7:30. I had been out visiting my sister until 7:30 in the morning, when I came home.

Q. You came home at 7:30 in the morning?

A. That is right.

Q. You remained in your apartment the rest of the day?

A. That is right.

Q. Now, the first thing you heard was what appeared to [fol. 399] be some hammering; is that right?

A. Yes.

Q. You fix the time of that hammering as about what hour?

A. Oh, I would say around 2 o'clock.

Q. Around 2 o'clock?

A. Yes, but it is not definite; it could have varied.

Q. Your best estimate is it was around 2 o'clock?

A. Yes.

Q. And the next thing that you heard unusual was what?

A. Was when my door rattled, and I thought perhaps it was a knock at my door.

Q. Did you determine that that actually was your door rattling?

A. Well, I determined it was not a knock at my door.

Q. Well, did you determine it was your door rattling?

A. Well, there was a noise—there was a rattling some place.

Q. How much time elapsed from the time that you heard the noise that sounded like hammering until you heard that other noise that appeared like a knock?

A. I don't remember how long it was.

Q. Now, what time was it you heard Mrs. Blauvelt's voice say, "What do you want of me?"

A. That was at 3:30 in the afternoon.

Q. How do you fix that time?

[fol. 400] A. I looked at the clock.

Q. You looked at the clock after you heard the voice speak or before?

A. Well, that I don't remember.

Q. I see.) But you fix the time—

A. It was probably after, because I wouldn't have looked before.

Q. You fix the time as being exactly 3:30?

A. 3:30 or 3:31.

Q. Now, at any time that afternoon did you hear a scream?

A. No, I didn't.

Q. You were home all afternoon?

A. Yes, I was.

Q. Now, what was the next thing that you heard that was unusual?

A. The key being used in the lock—that was not unusual; I just noticed it after hearing the remark in the afternoon.

Q. Then, about what time was it you heard the key in the lock?

A. The time I am not sure of. It could have been any time between 6 and 8 o'clock.

Q. I am sorry; I did not hear.

A. I said it could have been any time from 6 until 8 o'clock. The time I didn't notice.

Q. It was some time between 6 and 8 o'clock. Well, can [fol. 401] you tell us about how much time elapsed from the time that you heard Mrs. Blauvelt's voice until you heard the key in the lock?

A. No, I can't.

Q. Would you say it was before or after 6 o'clock that you heard the key in the lock?

A. After 6.

Q. After 6?

A. Yes.

Q. What was the next thing that you heard?

A. Someone closing the door and going back down, down the back stairway.

Q. How much later did that happen after you heard the key in the lock?

A. I don't remember.

Q. What is your best recollection?

A. I can't say how much later it was.

Q. Well, did you hear the key in the lock and then immediately hear someone going down the stairs?

A. No, I did not.

Q. Would you say it was around 9 or 9:30 in the evening that you heard the door close and someone go down?

A. I don't know what time it was.

Q. Are you able to tell us whether it was before or after 9 o'clock in the evening?

A. No, I could not.

[fol. 402] Q. You could not say?

A. No, I don't think it was after 9, but I am not sure.

Q. Well, from the time that you—withdraw that. Would you say from the time you heard the key in the lock until you heard the door close was a period of about three hours?

A. I don't know.

Q. Can you state whether it was more than one hour?

A. I still don't know.

Q. You still don't know. Now, you remember testifying at the preliminary hearing in this matter, do you not?

A. Yes, I do.

Q. I will ask you to read your testimony on page 17, lines 6 to 21. Will you just read it to yourself, please (handing transcript to the witness). Now, I will ask you if these questions were asked of you and whether you gave these answers:

"Q.— And what was that?

"A.— Earlier in the evening I heard a hammering in the hallway. I thought at the time the janitor was doing work out there, and later on in the afternoon I heard a noise that sounded as though it was knocking at my door and I listened again, and it was just my door rattling. Then later on in the afternoon, between 3:30 and 4 o'clock, I heard Mrs. Blauvelt say, 'What do you want of me?' and it was either in the hallway or with the door open, because I heard it very distinctly. Then, later that evening—

"Q.— How much later?

[fol. 403] "A.— Oh, I would say it was after 6. The time I am not sure of. I heard a key used in the lock in that door, and still later in the evening, I would say around 9 o'clock or 9:30, I heard that door close and someone go down the back stairs."

Were those questions asked and did you give those answers at that time?

A. Yes, sir.

Q. Now, did you at any time on that afternoon or that evening open your front door?

A. I went out to get my paper, which was in the hallway in front of my door.

Q. About what time was that?

A. Well, I would say between 5 and 5:30.

Q. I am sorry, I did not hear you.

A. Between 5 and 5:30.

Q. Between 5 and 5:30. At the time you went out to get your paper did you observe whether or not Mrs. Blauvelt's paper was in front of her door?

A. No, I did not.

Q. You did not observe?

A. No.

Q. Was Mrs. Blauvelt's door open or closed?

A. I did not notice that either.

Q. Did you observe whether the door to the garbage disposal compartment in Mrs. Blauvelt's apartment was [fol. 404] open or closed at that time?

A. No, I did not.

Q. You did not observe?

A. No, I did not.

Q. You did not see anyone entering or leaving Mrs. Blauvelt's apartment at any time that afternoon or evening?

A. No, I did not.

Q. Would you say now that it was about 9 or 9:30 in the evening that you heard the door of Mrs. Blauvelt's apartment close and someone go down?

A. I wasn't sure of the time. I said about 9. I have never been sure of the time.

Q. Was your recollection fresher at the time you testified at the preliminary hearing than it is now?

A. Well, I think it would be, yes.

Q. Did you at any time on July 24th see Mrs. Blauvelt?

A. No, I did not.

Q. Did you on July 24th or July 25th see any strangers around the building?

A. I didn't see anyone.

Q. Now, you testified that after you heard Mrs. Blauvelt's voice say, "What do you want of me", that you heard a low mumbling?

A. Yes, I did.

Q. Were you able to tell whether it was a man's or woman's voice?

[fol. 405] A. No, I couldn't tell.

Q. You couldn't tell. When you heard Mrs. Blauvelt's voice say, "What do you want of me", was it in a loud voice?

A. Well, it was not very loud; it was—

Q. Just an ordinary speaking tone?

A. Well, her voice did not sound right; it sounded frightened but it was not a real loud tone.

Q. You didn't make any investigation?

A. No, I did not.

Q. Or any report to the landlady?

A. Not at that time.

Q. From the time that you heard the lock in the door until you heard the door close and someone walking—did you hear someone walking?

A. Yes, I did.

Q. From the time that you heard the key turn in the lock, the door close and someone walking, was it a considerable length of time between those two things?

Mr. Roll: Wait a minute, counsel. I am going to object to that. I believe it assumes facts not in evidence. If I understood the testimony, I think the key-in-the-lock transaction is, the way she testified to here, a different time than the time she heard the door close.

The Court: That is as I understood the witness even on cross examination.

Mr. Roll: That was my understanding on both direct and [fol. 406] cross examination.

Mr. Safier: As I understand her testimony, she said at one time—

The Court: Well, let's find out if there is any question about it: Did you hear the steps, the footsteps, going down the stairs immediately after you heard the door of the apartment—

A. No, I did not.

The Court: That disposes of that.

By Mr. Safier:

Q. Can you give us an approximation of the time that elapsed between the time you heard the key in the lock and the door close and the footsteps?

A. No, I cannot; I haven't any idea what time elapsed.

Q. Well, would it be a matter of five or ten minutes, or a matter of an hour or two hours?

A. I don't know; I don't remember.

Q. You could not tell whether—

A. I know it was not immediately after, but how long a time there elapsed between there I don't know.

Q. What were you doing at the time you heard the key in the lock?

A. I was reading.

Q. You were reading?

A. Yes, and listening to the radio in bed.

Mr. Safier: I did not hear the last part of the answer.

The Court: "I was listening to the radio in bed."

[fol. 407] By Mr. Safier:

Q. You were already in bed at the time you heard the key in the lock?

A. Yes, I was.

Q. How long had you been in bed?

A. I went to bed about 6:30.

Q. About 6:30. Can you say about how long you had been in bed before you heard that key in the lock?

A. No, I can't.

Q. Well, had you been in bed reading for quite some time?

A. I don't know.

Q. What time did you quit reading that night?

A. I don't know.

Q. Well, did you read a whole book that evening?

A. No, I wasn't reading a book; I was reading a magazine.

Mr. Safier: I have no further questions.

Redirect examination.

By Mr. Roll:

Q. Counsel asked you on cross examination if you made any report to the landlady that night, and your answer was, "No, not at that time," in substance. Did you later on say something to the landlady—I don't want the conversation—about this noise?

A. I did the next morning.

Q. You did the next morning?

A. Yes.

[fol. 408] Mr. Roll: That is all. May this lady be excused?

The Court: She may be excused.

(Witness excused.)

Mr. Roll: I wonder, if under the provisions of the Penal Code, if your Honor please, pertaining to experts, if your Honor would be kind enough to call the expert that has been appointed by the court, Mr. Rogers, and ask him some questions as to his qualifications and then allow counsel to examine him.

The Court: Yes. However, it is not under the Penal Code; it is under the Code of Civil Procedure.

Mr. Roll: The Code of Civil Procedure; I am sorry.
The Court: Mr. Harris.

HARRY W. ROGERS, called as a witness by the Court, was duly sworn and testified as follows:

The Clerk: State your name, please.

A. Harry W. Rogers.

The Court: Just for the record, Mr. Rogers was appointed by the court under the provisions of Section 1781 of the Code of Civil Procedure.

Cross examination.

By the Court:

Q. Where do you reside, Mr. Rogers?

A. 731 Nevada Avenue, El Monte.

[fol. 409] Q. Your business or occupation is what?

A. Lieutenant of Identification, Sheriff's Department, County of Los Angeles.

Q. Does that make you head of the Identification Department?

A. Yes, sir.

Q. How long have you been with the Sheriff?

A. It will be seventeen years the 1st of January next.

Q. How long have you been in the Identification Department of the office?

A. About—nearly sixteen years.

Q. Now, prior to your going with the Sheriff's office had you done any work along the line of identification, particularly along the line of fingerprints?

A. No, sir.

Q. When did you commence your interest, studies and reading in that subject?

A. The first year that I went in the department I took a course in fingerprints, and then later that same year I took a Civil Service examination and went into the actual work on December 1st.

Q. You mean there was a special Civil Service examination for Identification Bureau work?

A. Yes, sir.

Q. Who gave the course, Mr. Rogers?

A. The man who was then in charge of the Identification [fol. 410] Bureau, Mr. Adams.

Q. Also in the Sheriff's office?

A. Yes, sir.

Q. Have you taken any other courses or listened to or heard any other lectures on fingerprints, that you now recall?

A. No.

Q. I am referring, when I say lectures, to talks by people who know something about it.

A. Not in the nature of a course. I have heard lectures on various phases of fingerprint work, but not definitely a course.

Q. By that you mean you have heard various speakers—

A. Yes.

Q. Who have spoken on the subject?

A. Yes, sir.

Q. Directly along your particular line?

A. Yes.

Q. Have you attended any schools as a student?

A. Not purely fingerprint schools, no, sir.

Q. Well, are there any purely fingerprint schools, that you know of here in California?

A. Yes, there are several.

Q. You mean they devote themselves directly and exclusively to fingerprints, or as a part of a general course in police science?

[fol. 411] A. Well, both. That is to say, the School of Government, U. S. C., is devoted to general governmental courses. There are thirty-eight police courses, of which one of those is fingerprints.

Q. That is a course that is commonly taken by a great many police officers, sheriffs, and officers around this vicinity?

A. Yes, it is.

Q. Have you ever yourself been an instructor or teacher of the subject of fingerprints?

A. Well, I taught that particular course for a little over four years.

Q. That is a University of Southern California course?

A. Yes, sir.

Q. Have you done any other teaching or instructing?

A. Yes, I instructed in the Police Officer's Training School held at the State College at San Jose a few years ago; I have forgotten the exact date. I have instructed—that was for

a summer course. I have also taught a special course at U. C. L. A. on the subject of fingerprints, which also was a part of the general course of criminology.

[fol. 412] Then I taught in our own department, the Sheriff's Training School, for a period of three years; most weeks one night and some weeks two nights a week.

Q. This may be a little off the subject, but it may explain your last answer. The Sheriff has for some time conducted a training school instructing his deputies in various branches of criminology, penology, police science and so forth?

A. That has been the practice; it has been discontinued now because of war conditions and so on. But up until the outbreak of the war it was the practice of the Sheriff to maintain a training course for his deputies.

Q. Now, is there an organization limited very largely to fingerprint work in this section of the country?

A. Yes, there are two such organizations. There is the California Division of the International Association for Identification, the membership of which is composed of men who are in Sheriff's work, fingerprint people, and also photographers. Then there is a local—that organization meets only once a year, has a convention once a year, at which there are prominent speakers who speak and instruct on phases of identification. Then, locally there is the Southern California Identification Officers' Association, which meets once a month.

Q. Just to cut it a little bit short—the members of these associations get together—these special fingerprint men—[fol. 413] and mostly talk shop?

A. Yes.

Q. With reference to reading, what reading have you done upon the subject of fingerprints?

A. Well, I have read practically everything—do you want me to mention the specific authors?

Q. Well,—

A. I have read practically everything—

Q. Do you know of any book you have not read? Let us put it that way.

A. Well, I have read practically everything, in particular, Galton, Kuhpe, Henry, Wentworth, Wilder, Chappelle, Bridges, and also Batley, Crosskey, and I have read but not studied Larsen.

Q. In addition, have you read shorter discussions on the subject, such as would appear in the Journal of Criminology and the bulletins gotten out by the Federal Bureau of Investigation?

A. Yes, I see the bulletin which is gotten out by the Federal Bureau of Identification, a monthly publication; also there is a fingerprint magazine published monthly that comes to my desk each month which I read.

The Court: Your work since you have been in the Department has included—counsel may object to this; I am trying to save a little time—I presume it has included the handling of all fingerprint problems from the locating, origin and all [fol. 414] latent and patent prints, the photographing of prints, the taking of fingerprint cards; in other words, rolled prints of prisoners, comparison and analysis of fingerprints generally?

A. It has.

The Court: I think that is as far as the court should go in this matter. I will turn the witness over to counsel.

By Mr. Roll:

Q. Mr. Rogers, if I may ask you some preliminary questions. I may not go into as much detail as I did this morning, but will you please, briefly in your language, tell us about the structure of the fingers, about fingerprints and what goes to make a latent fingerprint.

A. A latent fingerprint?

Q. Yes.

A. Well, nature has put on the inner surface of the hands and the feet certain papillary ridges, that is to say they are raised above the rest of the surface, and there are pores through which the perspiration is exuded from the skin, from the body. The skin itself, there are two layers of skin, the dermis and the epidermis, and beneath those are certain sweat glands, through which the secretion is exuded through the pores. Now, as to the latent print, it merely means that a person touches an object and the pores on which there is moist perspiration leaves an imprint. That is the secretion has gone upon the object touched. The furrows or valleys or depressions between the ridges, [fol. 415] the lower part, will not leave an impression in a person's hands that are normal. Of course, a person

who is nervous and perspires a great deal, the inner surface of the palms or fingers will be covered with moisture but, normally speaking, it will be only that moisture, that portion which comes through the pores, and we have then an outline of the ridge surface and it is called a latent print because normally it is not visible to the naked eye, but sometimes it will be made visible by throwing a light upon it from the side. In other words, if you put your eye down to the level of that railing you will find many prints there which were put there this morning by persons who have touched that railing. They are not visible as you look at them directly, and to bring those to view by a light so that they may be photographed it is necessary for the fingerprint man to use some agent that will develop or bring out that print so it may be photographed. The agent that is usually used is powder, because it is more convenient, but you can use certain chemicals, you can use iodine on certain surfaces but, as a general thing, he uses a powder that will contrast with the surface upon which the print is believed to be. If it is a white surface he will use black powder, but if it is a black surface he will use a white or gray powder, and what he is doing is trying to get a contrast so that he may photograph that print. One of the main factors in photography is to get a contrast [fol. 416] so as he dusts the powder over that he sees that it is developing a print of a certain type. As he brings it into view he will brush it out very lightly in the direction of the ridges so that he will get a good print. If he fails to do that, if he uses too much powder or brushes the wrong way, he will fill up the portions of the print which has been blank because of the furrows and valleys as they are sometimes called, and that is all that is meant by developing a latent print. Does that complete the answer, or is there something more?

Q. That is fine. Just very briefly, will you tell us what is meant, without going into all of your symbols, when we use the word classification of prints?

A. Well, two things are meant by classification. You have to either speak of the classification of the entire card, which is quite different than the classification of the print. Do you want me to tell both?

Q. Yes, tell them both briefly, if you will.

A. The fingerprint card as it is taken is, as you know, with the thumb in the upper lefthand corner, the right hand

at the top and the left hand in the same way, that is, the thumb under the thumb, and so on, so that at the top we have the rolled impression, the rolled ink impression, of each of the ten fingers. At the bottom we have a plain impression that is put in there for the purpose of checking to see that the prints are in the right order. Now, that classification is based primarily upon the arrangement of [fol. 417] the pattern of the hand. Those patterns which have two deltas, whorl type of patterns, are—the space in which they appear is given a certain classification, for instance, if there is a whorl in the right thumb, that is given a value, and all the other prints are in whorls, that is given a value of 1 over 17. I cannot go into the technical part of it, but it is the rule, I believe, that all persons who would have a whorl in the right thumb and no other whorls in the hand would all have a primary classification of 1 over 17, they would all be filed together, and then perhaps a classification given to those. Then the next division is to take the index and the middle finger, and they do this in the case of loops, by counting the ridges. In other words, they are going to be classified and filed according to the size, in other words, if the ridge had only three or four, the loop, for instance, had only three or four ridges intervening between the core and the delta, you would not file that with a print that had ten, eleven, twelve or thirteen. This is a division of size. The index finger was selected originally because nature has, for some reason, placed a greater diversity of pattern in the index than any other finger, therefore it is of secondary importance and called secondary [fol. 418] classification. It is divided further by the type of pattern, the ridge count in the middle finger, the ring finger and finally the number of ridge counts in the little finger in the case of a loop. In other words, if we are using this illustration, 1 over 17 for that whorl, and we found two small loops, there would be a further classification and the final count in the little finger might be one over 36, or might even be more, but that is a pretty big loop, and then it would be filed in a particular compartment, the latter being 1 over 17, it would be divided this way and filed by the count in the little finger. That is the final classification. There are other divisions using the thumb, using, in other words, a ridge count but essentially that is the method used in classifying these fingerprint charts. Do you want me to take up the single, too?

Q. No, I think that will be sufficient on that. In so far as your classification, it is used primarily for the purpose of filing; is that correct?

A. A place to file the print.

Q. In other words, when a fingerprint card, a whole card gets into the office there the classification is made of it and it is put in a certain file, is that right?

A. Well, ultimately.

Q. That is what I mean, ultimately.

A. That is correct.

Q. Now, will you tell us what you mean by comparison of [fol. 419] fingerprints as distinguished between what we have just been discussing?

A. I see. There are three steps in making comparison of fingerprints that is possible. You have this card of a certain person, you have another card or you may have a single print. There are three steps. The first is as to the general type of pattern, the general contour.

Q. Do you want to use the blackboard?

The Court: You may do so.

Mr. Roll: Surely. There is no objection to taking this little sketch out?

The Court: No.

A. It is obvious that if one print were of this type you could see at a glance that it could not be identical with this print, nor could it with this one or this or this print. In other words, the first step is to determine the pattern type and if they are alike you can go further; if they are not alike you are through. Any layman can see that. The next step will be to count the ridges of those patterns which have a central point or core and delta. That is possible both in this type of pattern and in this type of pattern, it is perfectly possible to count those ridges intervening there, and if you had a whorl of that type it would be perfectly possible to count those ridges and if you had four other and 1, 2, 3, 4, 5, 6, 7 of these the next step in comparison is to count the number of ridges intervening [fol. 420] between the core and the delta. Having done that the third and most important step is to check the points of identity, characteristic points within the loop. Assuming you have two loops with four counts in them, we have to examine those prints to see if they have the same

points of comparison, the same points of identity. Now, those points of identity are these. They are very seldom in a case like this that nature has put a continuous ridge which will fill the interspacing, but we will find a forking of the ridges, a bifurcation, you will find an abrupt ending where the ridge ends abruptly and possibly down here there will be two other ridges that come in like this, possibly they will join, and then we have a forking or bifurcation upward. The ridge might even join again, and we have an island or an enclosure. There may be other ridges like this, or maybe a little longer, so those are the characteristic points, the points of identity. Now, those points must occur in the same relative position, that is to say, — I am afraid I cannot use this.

The Court: Well, I think I get the point you are after. In other words, you have drawn a print there indicating an island. If you found an island in your fingerprints which have been picked off the scene of the alleged offense you would locate the island with reference to the core, that would be your first step, would it not?

A. Yes. What I am trying to show, sir—

[fol. 421] The Court: Then what would you do in making your comparison so far as the island is concerned with that fingerprint card, the rolled print?

[fol. 422] A. Well, we first must see if this island in each print is, say, the third ridge of the core at this same point and joining again at this same point, in an island out here,— in other words, the characteristic points must appear in the same analogous location, the same location on each print, so there is not only comparison of points of identity but they must occur in the same print. Now, when you have found, as the judge indicated by comparing the known print, the inked impression of a person with the one which is in question, then when you have found a sufficient number of these points to identify the whorls, bifurcation, abrupt ridge endings, short ridges, and so on, occurring in the same relative position, for instance, this second ridge, bifurcated downward, this second one downward, an island here at the same exact spot, then you know that the two prints are made by the same finger. I think that was the extent of your question.

Mr. Roll: Yes, Mr. Rogers.

Q. Now, let me ask you before you go any further: Do you know whether or not it has been figured out mathematically the chances of any two persons possibly having the same fingerprint or can it happen at all?

A. Yes, it has been worked out. A French mathematician, Balthazer, in about 1912 or '13, he presented a paper to the French Academy in which he figured that the probabilities of two persons having the same fingerprints were [fol. 423] one in—one followed by sixty ciphers, whatever mathematical figure that is.

Q. It is too large to say.

The Witness: Do you want me to indicate how it was done or not?

The Court: I think it might be interesting, but it might be consuming too much time. He did work it out on a mathematical basis?

A. Yes, sir.

By Mr. Roll:

Q. Now, in this case you were appointed an expert by the court; is that correct?

A. Yes, sir.

Q. And you came into court and in court did you pick up from somewhere in court certain negatives?

A. Yes, the court handed me six negatives.

The Court: 20, I think, is the number of the exhibit.

Mr. Roll: Yes.

Q. I am going to show you People's Exhibit 20, which contains three negatives, and I will ask you to look at those and state whether or not those are the ones that were turned over to you.

A. Yes, sir. Those were in the envelope, another envelope which was handed me by the court day before yesterday.

Q. What did you do with those after that? Go ahead and tell us the steps that you took. Did you look at the door [fol. 424] which is there in front of you, which has been marked in evidence?

A. Well, I was directed to the judge's chambers where the door, which is now in front of the desk here, was, and I examined it under a magnifying glass, the surfaces which had been dusted with black powder.

Q. Just a minute. When you say "surfaces", do you mean all surfaces that had been dusted?

A. That is correct.

Q. Go ahead.

A. I noted particularly that there were three places where dusted prints had been—paper had been put over them for the purpose of preserving the prints, and those I checked against these negatives to be certain in my own mind that these negatives were from the particular places on the door. I also checked—

Q. Go ahead.

A. I also checked the other portions which had been dusted, thinking there might possibly be a legible print.

Q. Now, with reference to these three negatives, you say you checked the three negatives against the various portions which have been marked on the door opposite "A", "B" and "C"; is that correct?

A. That is correct.

Q. And did you find these three negatives to actually be negatives of the prints thereupon—"A", "B" and "C" on [fol. 424a] this door?

A. I did.

Q. Go ahead. Then what did you do?

A. Then I went to the I. Laboratory, which is on the tenth floor of this building, and called the defendant from his tank to the identification bureau for the purpose of rolling a set of his prints.

Q. And did you roll a set of his prints?

A. I did.

Q. Now, I think you were in court when Mr. Larbaig testified this morning. Is that the same general system that you used as he described in rolling prints?

A. Yes, sir.

Q. That is what you did in this instance?

A. Yes, sir.

Q. Do you have the fingerprint card there, Mr. Rogers, that you rolled?

A. Yes, sir.

Mr. Roll: I offer that card in evidence, if your Honor please.

The Court: 30 in evidence.

By Mr. Roll:

Q. Now, after you rolled the fingerprint card of the defendant, then what happened? What did you do next?

A. Then I examined—first I made contact prints of these because it was a little easier to handle than these negatives, [fol. 425] tives,

Q. What do you mean by contact prints?

A. Such as were exhibited in court this morning.

Q. In other words, a paper was placed in direct contact with the negative—

A. I made prints of these negatives.

The Court: You got prints of the exact size?

A. Yes.

By Mr. Roll:

Q. Go ahead.

A. It was necessary, with the assistance of one of the photographers of the County, to enlarge certain fingerprints, and one of those enlargements was of the print here, this right middle of the defendant.

Q. You indicate this print here as being one of the ones you enlarged?

A. That is correct.

Q. Do you have the photograph as enlarged?

A. Yes, sir.

Q. Which one is that, this one here?

A. Yes.

Mr. Roll: May this, if the court please, be marked People's Exhibit 31?

The Court: 31.

Mr. Roll: In evidence.

A. Then an enlargement was made of the original exhibit, or negative, which is—I don't know the number. [fol. 426] Q. It is No. 20.

A. On the reverse side—the print on the reverse side of the door.

Q. That is the one right here; the one we have indicated on the door as being "C"?

A. Yes. This is the enlargement made by one of the official photographers, in my presence, of whatever that exhibit is.

Q. People's Exhibit 20, the single print.

Mr. Roll: I will ask that this enlargement be marked People's Exhibit 32.

The Court: It may be so marked.

[fol. 427] By Mr. Roll:

Q. Now, after you did that, then what did you do?

A. Then I made enlargements from the other two negatives, or attempted to make enlargements of the other two negatives, and also of the fingerprint card. And the next step, after they had been properly washed, dried and developed, was to compare those enlargements—or, first, mount them on the cards and then compare those enlargements.

Q. Now, you have here—you have brought up 31 and 32, which have been marked here in evidence; can you—you have indicated that this is the one taken from the rolled card, 31, and this is the one which is a photograph of the single print, "C" on the door. Can you at this time—I see you have no red lines on there. Can you state at this time whether in your opinion—withdraw that. Mr. Rogers, have you formed an opinion with reference to these two sets, Exhibit 31 and Exhibit 32?

A. I have.

Q. Will you state to the members of the jury and the court your opinion concerning those prints?

A. Both of these impressions were made by the finger of the same person, the right middle finger, I should have said, of the same person.

Q. With reference to your reasons for—I notice that on those two cards there, sir, you have not put any lines showing the points of identity. Do you have some pencil or [fol. 428] something that you could use right here in front of the jury so you could point them out as you go along?

A. If it is permissible, I would prefer to do it on the blackboard.

Q. All right; go right ahead, sir.

The Court: Well, I think we should have—I wonder if we couldn't get another blackboard?

The Bailiff: I may be able—

The Court: Have we got one?

The Bailiff: I think there is one in here.

The Court: Maybe we have recovered it. The blackboard sometimes wanders around the floor here, and we have quite a time to get it back.

The Bailiff: No, it is not in there.

The Court: I think we will take our recess. We are pretty close to our normal recess time. I think we will take our afternoon recess and see if we cannot find a blackboard in the interim. The jury keep in mind the admonition not to talk about the case or form or express any opinion.

(Recess.)

The Court: The record will show the jury, counsel and defendant present.

Mr. Roll: Mr. Rogers, if the court please, was kind enough to make three sets; one he desires to use, he has given one to defense counsel and one to myself, and I have picked up my set and the set he gave defense counsel, and [fol. 429] I thought possibly while he was making this diagram, we could let the jurors handle two of those sets and he could use one.

The Court: That is all right.

By Mr. Roll:

Q. So there won't be any question, Mr. Rogers, will you tell us—these were Exhibits 31 and 32—will you tell us again, Mr. Rogers, where these are from?

A. 31 is an enlargement of the inked impression of the defendant's right middle finger; 32 is an enlargement of the print found on the reverse side of People's Exhibit—

Q. People's Exhibit No. 6.

A. Marked "C".

The Court: That has been referred to heretofore in the record as the metal side or inside of the door.

A. On the metal or inside of the door. We have indicated—the first step is to compare this pattern—it has 16 ridge counts intervening between the core and central point of the print and the formation, where one ridge goes below and one goes in a V-shape. There are sixteen points intervening between those two points. This is the questioned print, this is the one which we shall attempt to indicate on the board with points of agreement, points of similarity. These lines are merely put in for purposes of outlining the pattern. We will start with the delta formation, where we have a V-shaped ridge. For convenience, I would like to mark that as No. 1. We will refer to it a little later, [fol. 430] this point. Looking at it this way—the bifurca-

tion, looking at it that way, we will call No. 2. Then, we find that at about this point, as near as we can get it in proportion, we have a ridge that comes down and forms a fork, [fol. 431] and that upper bifurcation of the ridge continuing on parallel with the outline ridge; that ridge continues on, then. I am not attempting to indicate the smudged or blurred portion of the print here, but taking as near as possible those—I am speaking now of this portion here—but taking the lower portion now and starting from the right, from the delta—

Mr. Safier: Mr. Rogers, will you indicate on here where you are drawing from so I can follow you?

A. Yes. The point which I have indicated here, sir, as No. 1, is this point here. The point which I have indicated,—

[The Court: Keep your voice up, Mr. Rogers.]

A. I am sorry, sir.

The Court: Keep your voice up; the reporter has to get what you are saying to counsel. I don't know whether the record entirely shows what happened. Counsel asked a question.

A. Speaking to defense counsel, I have indicated as point 1, on the enlargement of the inked impression, this point—it is technically the point of the delta—where the two sides of the "V" come together. I have indicated that, for the convenience of counsel, as No. 1. And I will continue now and draw a red line on his card for No. 2, so he may follow the design on the board.

Mr. Safier: Thank you.

A. Then, we will indicate as 3 another bifurcation up, [fol. 432] ward, at approximately that point, and it again joins to this ridge at this point, which we will indicate as 4. Then, from point No. 3, going over one ridge, that is the next ridge, to the—the next ridge to the right, from No. 3, we find an abrupt ending, which we will indicate as No. 5. The next ridge to that has a bifurcation; it is very close in the latent print, and it may show as an ending in the inked impression, which is clearer, and that is at this point here. I will try to make that faint there, because that is what has happened. Now, below.

Mr. Safier: Mr. Rogers, I am sorry to interrupt, but would you mind drawing a line—

The Court: Just a moment, counsel, please. I would like to accommodate you, but I think you should ask those questions on cross examination. Suppose you let him go ahead.

Mr. Safier: I am simply trying to follow it.

The Court: I appreciate that, but every time you interrupt we have to digress and go back, backtrack. I think you should wait and ask questions under the rules of cross examination, wait until the witness has finished.

Mr. Safier: I thought it would simplify it.

The Court: I am afraid it would just simply complicate it.

A. Then, from this point, we have a series of five ridges, which have apparently no breaks. The fifth ridge, however, [fol. 433] at approximately the same location, if we speak of it as the hands of a clock, we would say at 3 o'clock. From this point we find that there is an upward bifurcation, and that we would indicate as 7. Then, two more ridges intervening, about the same relative position at the point of the clock—it may possibly be a little nearer 2 o'clock—we have a ridge that again bifurcates and while it is somewhat indistinct, it is quite evident that it joins the ridge up in here, forming an island. However, because it is very indistinct we won't mark it as a distinct point of identity; it may or may not be. But this definitely is, and we will mark that No. 8. Then, from that point, No. 8, with one ridge intervening, we come to the ridge which forms a part of the core, the core being at this point. So that following over now, with one ridge intervening, we find this formation, joining to the ridge that forms the core at that point, No. 9. I would like to indicate that to counsel now, if I may.

The Court: Yes, you can orient him on that particular spot, if you will.

A. The point I have now marked No. 8 is this point here (indicating).

The Court: 9 was your last number, Mr. Rogers.

A. I beg your pardon. 9. The point in question was No. 9, which is the bifurcation downward on the core, on the ridge which forms the core. Enveloping the [fol. 434] ridge, the one which comes up over the core—it is not too distinct in the latent or questioned print, be-

cause this formation—I am not using any characteristic points on it at that particular spot, but it bifurcates also about here, and then counting up from that point, with one ridge intervening, we have what appears to be an island formation—with the ridge coming, joining again, forming an island formation at approximately this point, the ridge continuing on down without break or without bifurcating as far as it is shown in the latent. That is to say, as the finger was pressed, it was pressed not entirely down and only about so much of the finger shows? So, naturally, we cannot draw that which is not here.

[fol. 435] Now, another ridge intervening, I find a similar bifurcation, this point of the print being fairly clear, the smudged portion being in here, and one ridge intervening, coming down through here, and from this bifurcation which also comes down pretty well out of the pattern, that would be the eleven points of identity.

Q. Is that all you want to use the board for?

A. I do not want to—I would like to indicate, sir, that these ridges are continuous, but yet I do not want to be bound to point out a characteristic in a smudged area.

The Court: In other words, what you have done, Mr. Rogers, is to indicate on the blackboard by drawing lines in those that are clear and have not attempted to make an identification of those that are not clear? —

A. That is correct. Examining now this—

The Court: For the record, you are now using the rolled print enlargement?

A. No, sir. I am going to make the comparison now between the—

The Court: The card you have now in your hand, that is the one taken from the fingerprint card, the rolled print?

A. Yes, sir.

The Court: All right, just so we get the record.

A. As the judge indicated, I am going to call your attention now to the enlargement of the rolled or inked impression.

[fol. 436] The Court: That is the one that was actually taken by you from the defendant's finger?

A. Yes, sir.

The Court: Very well. You may proceed.

A. So that in examining the print we must find these various characteristics occur in the same relative position, and we find, then, examining the enlarged latent or questioned print with the enlarged print of the inked impression, which is known to be the right middle finger, we find that the delta formation—first of all, that it is above the loop type of pattern, that sixteen ridges intervening between core and delta, that the delta formation is formed by a letter “V”, which is indicated as point No. 1. Examining the known print, we find at that same location a point which may be marked as No. 1. Continuing with that same ridge toward the right, we find that that shows another ridge making a bifurcation, and that has been marked as No. 2. Going to the right at about 1 o’clock we find that there is a bifurcation upward, one leg of which continues up to the indistinct area of the questioned print, and the other part or fork joins again to the ridge here. We did not mark that as a point. We might have marked it as 12 or 13. We find that examining the known print, we find both those bifurcations, both are formations in the known print. No. 4 is an abrupt ending where a ridge seems to come down and end abruptly. Well, I marked it 4 here so that in this print, [fol. 437] moving over one ridge to the right, we find such an abrupt ending. The next ridge to the right is a fork or bifurcation upward. We find the same characteristic in the enlarged inked impression. Counting over to the right again with four ridges intervening, we find that the fifth ridge shows also an abrupt or rather a bifurcation upward. Counting over four ridges intervening here from point 5, we find at the same location a similar formation, bifurcation upward, and that has been marked as No. 7. Continuing over, the two ridges intervening, we find another bifurcation upward, which is No. 8. We find that the core formation in enlarged latent is rather bifurcated. We find the same formation in the known print and that has been marked as No. 9. Going over to the right at about 1 o’clock in relation to the hands of the clock, we find, with one ridge intervening, a bifurcation toward the left which is marked down on the board, and going further one ridge from the right in the known print we find at the same location the same formation; a bifurcation which has been marked No. 10. Still going to the right, with one ridge intervening now at about 1 o’clock or a little—maybe 2 o’clock—we find a bifurcation which has been marked 11,

and examining the known print at the same analogous point, the same identical location, we find a similar print which has been marked 11. I have indicated that this is an [fol. 438] island. It is not distinct enough to mark this as an entire point of comparison. I have now marked 11 points. There are many others which might have been marked.

Mr. Roll: I wonder, if your Honor please, if I could substitute the one counsel marked on, which was 31; and we have another one there I did not notice. I just wanted to substitute one for the other.

The Court: That is all right.

Mr. Roll: In other words, it is the same photograph of one of the other exhibits, and we do not want any marking on the one that is in evidence.

Q. Now, Mr. Rogers, the explanation which you have just given us, I take it, is the reason, then, for your conclusion that the two prints, that is the known print taken from the fingerprint card which you rolled, and the latent print, which is taken from this Exhibit No. 6, marked "C" thereon—

The Court: Being the door.

By Mr. Roll (continuing):

Q. —being the door, are one and the same print in so far as identity of individuals are concerned; is that correct?

A. My reason is that having examined the original print of the metal side of the door, and having enlarged that and compared it with the ring finger of the defendant, having compared the two and observed the characteristic points, it is my opinion that both of these prints were made by the right middle finger of the defendant.

[fol. 439] Q. Now, Mr. Rogers, I am going to direct your attention here to some other exhibits. I believe these have been marked 19-A, 19-B and 19-C. I will ask you to look at those as against the negatives which are 20. You have already examined 20; is that correct?

A. Yes, I think those are the same ones.

Q. Yes, those are the ones you had in your possession. Now, from your examination these are reproductions—strike that. 19-A, B and C, I believe, are reproductions of People's 20; is that correct?

A. That is correct.

Q. Now, I am going to direct your attention to People's Exhibit No. 28, and I will ask you to look at that, sir, if you will.

A. This is a photographic enlargement of 19-B.

Mr. Roll: 19-B. All right.

The Court: 29 I think is the exhibit you are looking for.

Mr. Roll: No. I think the one I wanted, your Honor, was the fingerprint card here that Mr. Larbaig made.

Q. With reference to People's Exhibit 29, will you examine that, please?

A. Yes.

Q. That is a—

A. Photographic enlargement of the right index, right middle and right ring finger of A. D. Adamson.

[fol. 440] Q. All right. Now, would you look at 28 and 29 and state whether or not—I will ask you to look at and make a comparison upon those prints shown on 28 and 29, and after you have made your comparison, I will ask you to state your opinion as to who the makers of those two sets of prints are, or maker.

A. I did not get the last part of your question, sir.

Q. You have made a comparison, have you?

A. Yes.

Q. Will you give us the results of your comparison?

A. The results of a comparison of Exhibit 28, which is an enlargement of the latent print, with Exhibit 29, which is an enlargement of the right index, right middle and right ring fingers of the defendant, shows that both impressions were made by the same person.

Q. Now, without going into too much explanation, would you please give us your reasons for that opinion, please?

A. Well, comparing the points again—shall I come down?

Mr. Roll: If your Honor desires to go into it—

The Court: I wonder whether we might not cover it in this way? Mr. Rogers, in making the comparison, you followed the same plan that you followed on the blackboard when you illustrated to the members of the jury?

A. That is correct.

The Court: Did you find points of identity in these Exhibits 28 and 29? Generally what were they?

[fol. 440a] A. Generally—

The Court: Don't go into any further detail than you can.

A. Generally speaking, the bifurcations, scars, abrupt endings and islands—one island, occur in the same relative position on both prints. These points of identity are the same in both exhibits, from which—that is to say, where there is a bifurcation and you find the same number of ridges intervening between that and the next point, those marked on these exhibits, and there being sufficient of these points, we must conclude that both impressions came from the hand of the same person.

The Court: You made reference in your answer to the subject of scar or scars. Just what do you mean by that, and what, if any, is the significance?

A. A scar ordinarily is not of great value in making a comparison; it is not always there; that is, the time interval during which the hand or finger has become scar-ed. But where it is in both imprints or impressions, it is additional proof or evidence. It is like another characteristic point. And it is the point that seems to be most obvious to a person who is not familiar with fingerprints. If it is in both prints it is a good point of comparison. But it is not necessarily to be used, because it may not be in both impressions.

The Court: By that you mean this: If you see two prints [fol. 441] that were otherwise apparently identical, and one showed a scar and one did not, the fact one did not show a scar would not mean anything?

A. No, sir.

The Court: But if you saw it present in both, it would be significant?

A. That is correct.

By Mr. Roll:

Q. I am going to show you here two other enlargements, People's Exhibit 27 and People's Exhibit 26, and also the small one, People's Exhibit 19-A, and I will ask you first with reference to 19-A. Is this People's Exhibit 26 an enlargement of 19-A?

A. Yes.

Q. With reference to People's Exhibit 27, I will ask you to look at it and state whether you—compare it with one of the rolled fingerprint cards and state whether or not it is an enlargement of one of the rolled fingerprint cards of the defendant?

A. That is the right ring finger—the enlargement is a photographic enlargement of the right ring and right little finger of A. D. Adamson.

Q. All right. Now, I will ask you the same question, sir, I asked you with reference to the other two enlargements, People's Exhibit 26 and People's Exhibit 27; if you will examine those and compare them, and when you have made your comparison state your—the result of your conclusion [fol. 442] to the members of the jury.

The Court: Had you previously compared them, Mr. Rogers?

[fol. 443] A. No, sir. Having examined People's Exhibit 26 and comparing it with People's Exhibit 27, it is my opinion that both the exhibits are—the portion of the exhibit which has been marked No. 26, and No. 27, were made by the right ring and right little fingers of A. D. Adamson.

By Mr. Roll:

Q. Now, will you state briefly the reasons for that?

A. Because a comparison of the characteristic points and their location, the location of those characteristic points within the prints, are sufficient to establish proof of identity.

Q. In so far, Mr. Rogers, as your appointment in this case is concerned, you were appointed by the court; is that correct?

A. Yes, sir.

Q. You have not consulted, or have you consulted with Mr. Larbaig concerning this whatsoever?

A. No, sir.

The Court: You really did not know what the case was about until it was handed to you?

A. No, I didn't know the circumstances of the case. In fact, I had forgotten the details of the case. I knew nothing of it until the court handed me the exhibits yesterday afternoon.

Mr. Roll: Would this be a good place to take our recess?

The Court: I think this would be a good place to take our [fol. 444] recess.

Mr. Roll: May I make this suggestion?

The Court: Yes.

Mr. Roll: I ask Mr. Rogers at the recess if it would be possible to take a photograph of his drawing on the board,

and he informs me it would be possible. If so, I would like to have it marked as an exhibit, that is, the photograph, so we may have that in the record here.

The Court: It may be a good idea to photograph the other blackboard also, as long as we have the cameraman up here.

By Mr. Roll:

Q. Will you do that, Mr. Rogers, so we can have it Monday?

A. Do you want it done today or tomorrow?

The Court: It will be time enough to have it Monday.

A. I will have it done tomorrow morning.

The Court: We will take our recess now until Monday morning at 9:30. The jury keep in mind the admonition heretofore given, not to talk about the case or form or express any opinion.

(Whereupon an adjournment was taken until Monday, November 20, 1944, at 9:30 o'clock a. m.)

[fol. 445] Monday, November 20, 1944; 9:30 o'clock A. M.

The Court: In the case on trial the record will show the jury, counsel and defendant present. You may proceed.

Mr. Roll: I do not see Mr. Rogers here, your Honor. I understand he was here early this morning. The bailiff informed me he was here at ten minutes to 9 and said he would be back here at 9:30.

The Court: He probably has been held up by something. We will just hold it a minute while we are waiting for him.

The Bailiff: Judge, one of the jurors would like to be excused for five minutes. She has a parcel down in the tax office.

The Court: All right, we will take a short recess. The jury keep in mind you are not to talk about the case or form or express any opinion. Take a short recess.

(Short recess.)

The Court. The record will show the jury, counsel and defendant present. You may proceed.

Mr. Roll: I think possibly, if the court please, it might be of advantage of all of us to move that over there against the wall.

The Court: Yes.

[fol. 446] Harry W. Rogers, recalled:

Mr. Roll: I would like to ask one or two more questions, if I might.

Direct Examination (resumed)

By Mr. Roll:

Q. Now, Mr. Rogers, with reference to People's Exhibit No. 6, there has been placed there on the diagram on the board there an indication that on the side below the knob the prints that were made would be the right ring and right little finger, and on the side of the hinges, that is on the face side of the door, it is the left index, left middle and left ring finger. Now, can you indicate—you can step down here if you want to—with a little piece of chalk, and we will just take—will you indicate, sir, with reference to the position of the fingers there, particularly with reference to the tip of the fingers, how the arch—these are the hinges, this is the knob. I have not put any prints on there at all. All I want is the position of the fingers, in other words, if the fingers are like this, with the tips here, or if they were up like this, do you see what I mean?

A. On this side, this portion here marked "C," the prints are off in that position, they are close together, off like that (illustrating).

Q. All right.

A. On this—

[fol. 447] Q. When you say about like that—

A. It is not in proportion, sir. You have the idea here (indicating).

Q. Well, the tips of the fingers, the end of the fingers in toward the center of the door.

A. That is correct, being these three fingers.

Q. Now, we will come over to the side of the door, being the side where the knob is. Does the same situation exist with reference to the right ring and the right little, are the tips in toward the center of the door?

A. That is correct, just like that (illustrating).

Mr. Roll: All right, I will mark "T" here and "T" here. You may cross examine.

[fol. 448] Cross-examination.

By Mr. Safier:

Q. Mr. Rogers, you are connected with the Sheriff's office of Los Angeles, are you not?

A. I am.

Q. In what capacity?

A. In charge of the Identification Bureau.

Q. I am sorry; I did not hear.

A. In charge of the Identification Bureau, with the rank of lieutenant.

Q. All your fingerprint work has been from the side of the prosecution, from the side of law enforcement, has it not?

A. I don't recall any case where I have actually testified in court for the defense, no, sir.

Q. Now, in the last analysis fingerprint identification is made from a comparison of fingerprints, isn't it?

A. That is correct.

Q. If you find a certain number of points which you call points of similarity, you make your identification from that, do you not?

A. Yes.

Q. It is also a fact, is it not, that fingerprint experts do differ as to whether or not one print might compare with another, do they not?

A. That is true.

[Vol. 449] Q. Now, how many points of similarity do you require, Mr. Rogers, before you would make an identification that the prints came from the same finger?

A. It depends upon the area of the pattern. If it is purely a delta formation, or any peculiar formation, a few points would do. We actually have in our department a rule we should show or mark at least ten points of identity.

Q. At least ten points of identity?

A. Ten.

Mr. Roll: I do not know whether the jurors were able to hear all of that. I do not know whether the microphone is on or not.

The Court: No.

A Juror: One answer I did not get at all.

Mr. Safier: May the reporter read back the last two or three questions, your Honor? The juror said they did not hear it.

The Court: If you will, please.

(Record read.)

By Mr. Safier:

Q. You would not make a positive identification from four points of similarity, would you?

A. If the four points of similarity were very peculiar, not in the field of the pattern or—I mean to say that if it were definitely a peculiar formation, I would say that it was the same person. However, it would be very difficult to prove that in court. For that reason we have established [fol. 450] the rule there must be at least ten points. It goes back to the mathematical figure of probabilities of positive identification.

Q. If you did find ten points of similarity in examining two prints, and any number of points of dissimilarity, would you still make an identification?

A. Well, you include both conditions. Theoretically, to prove two prints not alike you would have to have ten points of dissimilarity; that is, clearly—clear and distinct points not due to pressure or smudging, or was not definitely clear and visible points of dissimilarity, to prove that the prints were from two different fingers.

The Court: May I ask a question on that, what the witness means by dissimilarity?

Mr. Safier: Yes.

The Court: Going back to your blackboard diagram, you have indicated to the left of the core area, where the lines were not clearly decipherable on the questioned print; now, do you refer to that area as a dissimilarity?

A. Within that area, sir, there would be points of dissimilarity due to the fact that that area is smudged; it is not clear.

The Court: Now, another question. You have referred to distinguishing one print from another by the number of points of dissimilarity. When you referred to a dissimilarity you have answered that you referred to a smudged [fol. 451] dissimilarity or distinct dissimilarity in a pattern that you actually found to exist.

[fol. 452] A. Distinct dissimilarity in position of the characteristic points. That is to say, the bifurcations, abrupt endings and so on which are normally marked in making an identification, those distinct points of non-identity should be shown. That is to say that—if I might refer to the board again—just to the right of the core there is mark No. 10—if such a bifurcation occurred below that point, maybe in that same ridge but half an inch lower, if there was no bifurcation there that would be a distinct point of dissimilarity. If the core formation, which has a ridge that bifurcates downward and another print showed no such bifurcation downward, that would also be a point of dissimilarity.

By Mr. Safier:

Q. Given one latent print and one rolled print, Mr. Rogers, if you found ten points of similarity would you not then attribute the points of dissimilarity to some foreign substance in the latent print?

A. It might, it might be a foreign substance on the surface from which the latent print was obtained; it might even be a foreign substance on the finger of the person who left it there, and it might be due also to the fact that there was a difference of pressure. The inked impression to which you refer would be rolled evenly, but the pressure exerted in lifting an object, such as that door or a chair, or anything of that sort, would cause a difference in appearance due to the pressure exerted, so the differences may be due to the presence of foreign substance or also to the difference in pressure.

[fol. 453] Q. Well, if you had the ten points of similarity between the latent print and the rolled print, you would attribute any points of dissimilarity to some foreign substance or pressure, or something of that sort, wouldn't you?

Mr. Roll: I am going to object to that, if the court please, on the ground it is purely hypothetical. If he is referring to the prints here in-question I have no objection to it.

The Court: I will allow the witness to answer. Repeat the question, Mr. Reporter, please.

(Question read.)

A. That is correct.

By Mr. Safier:

Q. What system of filing do you employ in the Sheriff's office, filing of fingerprints?

A. Does the question refer to—

The Court: Classification, I think is what counsel means.

Mr. Safier: Yes, classification is the better word.

A. On the ten fingerprint card we use the Henry System as modified by the FBI at Washington; on the single fingerprints we use the Batley System of classification.

Q. Now, under your system in the Sheriff's office, if you had photographs of prints as taken from this door, how long would it take you to make an identification with a set of prints that you had already had on file?

The Court: I am afraid,—counsel will pardon me, I do not like to break into your cross examination, but I think [fol. 454] you are confusing identification and classification. I think your question is directed to this point: If this door, for example, had been presented to Mr. Rogers, how long would it take him to find out whether he had a fingerprint card that corresponded with those prints; is that the question?

Mr. Safier: I may reframe the question in that way.

The Court: Well, I think he has the idea.

By Mr. Safier:

Q. If this door were presented to you, Mr. Rogers, and you took the prints off the door, how long would it take you to make an identification if you had a corresponding set of prints in your classification in the Sheriff's office?

The Court: Assuming the classification was a regular fingerprint card, regularly filed in their regular file.

Mr. Safier: Yes, your Honor.

A. That would be difficult to say on the ten finger card. In the single print card it would be possible to classify the print which has been illustrated on the board because of the fact that the print is fairly complete. The other prints which have been referred to as—I don't know what they are referred to; but at the lower part of the door where there are two prints of the right hand and three of the left, those, because of the fact that the delta is not present,

it would not be possible to classify, so that in answering your question the print which is on the board could be classified [fol. 455] in two or three minutes. Going to the single fingerprint file, it might take as long as five or six minutes, to find that particular print, that is the inked impression with which this corresponded. If there were no card in the single print file, that is to say, if the person had not been in on a burglary, grand theft auto or various crimes of that kind, it would be an endless job to find that in the ten fingerprint card, in the file that contains the ten fingerprint cards.

Q. Now, if you took the prints from this door and sent them to the Federal Bureau of Investigation at Washington for identification, and assuming that they had on file corresponding fingerprints in Washington, how long would it take your office to have a report back?

A. At the present time, unless special request was made, it would take a matter of months. They are swamped with work back there. If it were sent by air mail—I don't know the situation here, sir, but if it were sent by air mail, with a special request, it might be returned in a period of five or six weeks.

Q. I see. Mr. Rogers, it is possible, is it not, to forge fingerprints?

A. To forge fingerprints?

Q. Yes.

A. No, sir, not in the sense—may I explain that answer? [fol. 456] The Court: Yes, I think you had better make your explanation because you cannot answer it in just a sentence.

A. In the sense that forgery, as ordinarily used, you cannot forge a fingerprint any more than you can forge anything else in nature, a sunset or anything of that kind, it just cannot be done. There is a method, however, and I don't know just what the word to describe it would be, but it is possible to copy a print and transfer that reproduction elsewhere. If you mean, sir, by forgery that process, the answer would be yes, but it is not a true forgery.

By Mr. Safer:

Q. But it would bear a great degree of similarity, Mr. Rogers, to the true print, would it not?

A. Somewhat. It has been done in laboratories. It has been done experimentally.

Q. Had you finished your answer?

A. I would like to answer further, if you will,—

The Court: I wish you would, Mr. Rogers.

Mr. Safier: Yes.

The Court: I suggest you go ahead. The question is one which does require more amplification. I am a little familiar with it.

A. All right, sir. Usually the method of those who wish to experimentally—many fingerprint men and scientists who are reputable and not dishonest, really reputable scientists, have made an attempt, for their own convenience, to copy fingerprints. The first publication to that [fol. 457] effect was a book by—published in book form by the authors Bessel & Wehde, the title of which was "Fingerprints can be Forged." The book is not important, I mean to say it is 150 pages, but the first hundred pages have to do with the history of fingerprints, and in the remaining portion of the book Wehde, who was a convict in Leavenworth, described a method of taking an inked impression—could I have a fingerprint card, any fingerprint card? (Receiving card.) Wehde was an experienced engraver and lithographer. He presented at the International Association for Identification, back in the year 1922, a system which he had of copying this fingerprint, making an engraved plate, which bore the ridge surface, bifurcations, and was, in fact, an exact copy of the ridges as they appear in, we will say, this right thumb. Then he made enlargements of it so that his enlarged print then was four steps removed from the original, or that is to say the first was a negative, there was a print which was again copied, and the enlargement made from that, and he submitted these prints, one that he had copied—photographic enlargement of the one which he had copied, a photographic enlargement of the inked impression, and said that it would not be possible to distinguish between the two. Incidentally, that went back to an old German method that had been done years before but apparently not published. However, the Committee of Identification [fol. 458] officers to whom that was submitted were able to identify the true print and the spurious print. The assumption was this,—nevertheless, they went ahead and published the book, and we have had to consider it—the assumption was this, if that could be done it would be

possible to place that print on a particular object, such as that door or anything else, to throw suspicion upon an innocent person. It would be necessary to secure in some method the print of the person involved and then, with the use of this—I want to get this clear, there are other methods besides this—it would be possible, however, to have a rubber finger stall and copy those ridges on that finger stall; it would be possible to make the matrix of any gelatine like substance which would take the impression from which it could be hardened and from which a matrix could be made. Now, with that digression, we will go back and say that under this procedure it would be possible then, for me, for example, to obtain the fingerprint of any one of you made as you touched the railing there, the water glass or something else, or if I had access to that fingerprint card, to copy it from here and then transfer that copied print to that door, the assumption being that they could not be detected. The difficulty is, or the reason why most of them—spurious prints are detected, is because they are too perfect. In Laboratory work, those who have published results of their experiments, it is noted that the [fol. 459] latent print is too perfect. I do not like to inject the personal element in court witness testimony, and yet, for the purpose of illustration, I might say that I personally have detected two such spurious prints, one of which, fortunately, was before the case went to trial, and not by any of our local fingerprint men, and the other case had, however, at the time I got into it, had gone to trial.

[fol. 460] And in both of those instances the job was too perfect. I will say for the benefit of defense counsel and all others, that if it were possible to make—to make an exact copy of the prints which I have placed here, showing all the imperfections it might get by, although there is one other feature beside the perfection, and that is that nature's oil or the body salts that is exuded through the pores of the skin cannot be duplicated. You might rub that rubber finger stall or matrix over an oily surface or over your hair to get a little oil on it and put it on that door or somewhere else, but it wouldn't be very successful. It will not show—may I use the board, sir?

The Court: Yes.

A. I have touched a part of that and you can see the imprint of my fingers, and the chalk has adhered to the

ridge surfaces where nature's oil or body salts has been exuded from the pores. A similar action takes place when powder is dusted on any object or on that door, for instance. And that is what has happened, the powder has adhered to the ridge surfaces.

Mr. Safier: Mr. Rogers want to know if he can show that to the jury again?

The Witness: Is it desirable to show that to the jury?

Mr. Roll: I think it probably would be.

The Court: I think it would be interesting, at least make the testimony a little more concrete.

[fol. 461] The Witness: I think it would explain the point that we are trying to bring out as to copying prints.

Mr. Roll: I do not know whether it might be easier for them to file around and look at it.

A. The point we are trying to make, sir, is the difficulty that a person would have in trying to copy or to present a spurious print. In the language of some authors, and that is which is known—

The Court: I think I realize the difficulty you are under, Mr. Rogers, because you are dealing with a group of ladies whose knowledge of fingerprints is very limited. I will allow you to handle it in your own way, Mr. Rogers. After all, that is probably the fairest way of doing it. Do you have any suggestions as to how you could bring the knowledge home to the jury?

A. One other thing that might be done to present the point, possibly, would be to develop an actual print, and then you would have the same difficulty of bending over and observing it. If it is not important, sir, we will omit it.

The Court: Perhaps we better take another question.

The Witness: I beg your pardon?

The Court: Perhaps we better take another question.

The Witness: Perhaps he better ask one?

The Court: Yes.

By Mr. Safier:

Q. Have you finished your answer?

A. I hadn't finished the question of copying prints. It [fol. 462] is a rather long and involved process. If you wish to bring out any particular point, however—

Q. Well, I simply want to know, Mr. Rogers, whether it was not possible to forge a print, and I think you have answered that, at least, in so far as necessary. It follows, then, does it not, that given a true rolled fingerprint of an individual one could through some process put that fingerprint on some other object, could they not?

A. Yes. They would have to make from that matrix of some kind to copy it—I mean, from which a reproduction could be made. It is—

Mr. Roll: Go ahead.

By Mr. Safier:

Q. Were you going to say something else?

A. What I was going to say probably is repetition of what I have already said.

Q. You testified, I think, that upon two occasions you discovered spurious prints; is that correct?

A. Yes.

Q. Was that in connection with some criminal trial, Mr. Rogers?

A. Do you mean criminal case or criminal prosecution?

Q. Criminal prosecution.

A. In one case the case was actually prosecuted, and the second case it was not, because it was discovered in time. Both involved a criminal offense, however.

[fol. 463] Q. Were those spurious prints made by some law enforcement agency?

A. No, sir.

Q. Now, getting down—

The Court: Were they very good jobs?

A. They were too good, too perfect.

[fol. 464] The Court: In other words, could you put it this way, Mr. Rogers: That in order to simulate or, use the slang expression, fake a fingerprint of one person and put it on a piece of material, would you say it required an extremely high degree of skill to be at all apparently successful?

A. Yes, it would.

By Mr. Safier:.

Q. Mr. Rogers, the other evening you took a set of rolled prints from the defendant, did you not?

A. I did.

Q. And he voluntarily let you take these prints; he had no objection, did he?

A. That is correct.

Q. And did you make your own photographs from the prints on the door, or did you use the photographs of the prints on the door?

A. No, sir, I used the negatives which had been taken by the person who investigated the case.

Q. I have here People's Exhibits 31 and 32, 31, I believe, is a rolled print, is it not?

A. That is photographic enlargement of a rolled print, yes, sir.

Q. Exhibit 32 is a photographic enlargement of a print from the door?

A. It is.

Q. Now, I will ask you, Mr. Rogers, if in examining, which way does it go? This way?

[fol. 465] A. That is right.

Q. I will ask you if in examining those prints, those photographs of prints, rather, whether or not you found any points of dissimilarity?

A. Yes, points that are dissimilar because of pressure or smudging.

Q. Will you indicate what points of dissimilarity you found on there?

A. In this area here there are—

Q. Just a minute, Mr. Rogers.

Mr. Safier: May Mr. Rogers step down and point it out in front of the jury, your Honor?

The Court: Yes.

A. For instance, counting up from the delta formation, one, two, three, four, five, six, we find here—may I take another copy?

By Mr. Safier:

Q. Yes.

A. I just don't want to mark up a court exhibit.

Mr. Safier: Have you another copy, Mr. Clerk?

The Clerk: Of what?

Mr. Safier: Of these prints?

The Clerk: No, sir.

The Witness: Is it all right, sir, to mark the court exhibit?

The Court: I think Mr. Roll has—

Mr. Roll: I have a set, and I gave counsel a set also. [fol. 466] Here is another set.

The Court: Defense counsel has a set and Mr. Roll has a set.

Mr. Safier: Yes. I think I left my set in the office.

The Court: Just for the record, Mr. Rogers, use the set which Mr. Roll has given you.

Mr. Roll: Do you want that marked in evidence?

Mr. Safier: Well, I think maybe we better have it.

The Court: I think it would be better to use it rather than the regular exhibit, because we might get too many marks on there and we might get confused. All right, Mr. Rogers, use Mr. Roll's set.

A. Well, taking this as the point of the delta in each print, going up here, one, two, three, we find the point there that agrees with this point here, bifurcation. To follow this on further, we find that those two ridges which have bifurcated apparently come together again and form an island. However, in this print they go on up, and they seem to be open here, not joined. So it seems to be a point—instead of an island, as it appears in those prints here, it seems to be a point at that point. Of course, the fact that whoever pushed against that core exerted more pressure on that finger or this finger, rather, than was given or was put on it at the time the finger was rolled. So it is an explainable difference. I am unable to find in this print, sir, unexplainable differences. There are many [fol. 467] such cases as this. I start at this point and count up to this point, six ridges, and speaking of the hand of the clock, about 11 o'clock, counting up here, one, two, three, four, five, six we do not see that that is joined together. But again it is due to the fact that more pressure was exerted.

By Mr. Safier:

Q. Well, are there any other points of difference?

A. Not unexplainable, no, sir.

Q. You would have an explanation for all your points of difference as long as you find your ten points of similarity, would you not?

A. It is very likely; I haven't examined it carefully.

Q. And all your explanations as to these points of difference is merely supposition and conjecture on your part, isn't it?

A. It is rather theory as to what happened to cause that apparent dissimilarity.

[fol. 468] Q. Well, it is conjecture, guesswork and supposition as to what happened?

A. If you want to call that conjecture and guesswork, yes.

Q. You do not know actually what did cause it?

A. No, we do not know what actually happened; we didn't see it happen.

Q. As a matter of fact, there appears to be a difference in the core itself, doesn't there?

A. That is correct.

Q. Of course, you have an explanation for that difference in the core too, haven't you?

A. In the core formation it is a little difficult at first to see the similarity or exact identity of the two cores, because of the fact that the pressure has joined one or two ridges just above the core formation. But I can explain that, sir, as being due to pressure.

Q. That is simply a guess on your part, however, the difference being due to pressure, isn't it, Mr. Rogers?

A. A theory as to how or to what caused it, it certainly would be a guess in the sense that we did not see it done.

Q. You would attribute all the differences in the two prints to these various things, such as pressure and so forth, simply because you have found the eleven points of similarity in the prints?

A. There are eleven marked; there were more than that; eleven were marked. There is also this to be said, sir, that the area is—does not show as much finger, therefore, the differences due to the fact that the rolled impression shows the complete ridge surface.

Q. In comparing the rolled prints with the other—with the photograph of the other prints upon the door, did you also find points of dissimilarity?

A. Comparing the rolled prints with what?

Q. You had some other prints from this door that you examined, did you?

A. Yes.

Q. And you found—of which you made a comparison with the rolled prints that you took of the defendant; is that right?

A. That is correct.

Q. In connection with those prints did you find points of dissimilarity as well?

A. The same type, those that were due to a difference of pressure or foreign substance.

Q. That is, you attribute those points of dissimilarity to these various things?

A. That is right.

Q. Difference in pressure and foreign substance?

A. That is right.

Q. Given any two set of prints, Mr. Rogers, if you find ten points of dissimilarity, would you attribute all the points [fol. 470] of dissimilarity to some foreign substance, difference in pressure or something of that sort?

A. If you find ten points of similarity, although the proper word, possibly, should be identity, and do not find as many as ten points that are not identical, then you must assume that both prints came from the same finger. In other words, in making your examination you have got to not only look for those points of identity which appear in the same position, but you must also look to see if there are not—that there are no definite or distinct characteristics that are not in agreement.

[fol. 471] Q. I see. Mr. Rogers, how many years did you say you have been engaged in fingerprint work?

A. It will be sixteen years on the 1st day of December.

Q. In that length of time has it ever come to light that you made a mistake in identification in any case?

A. Not in a court case, no, sir.

Q. Well, regardless of whether it was a court case or not.

A. Oh, yes.

Q. The answer is "Yes"?

A. I beg your pardon?

Q. I say, the answer is "Yes"?

A. I would like to explain it, if I may.

The Court: You may.

A. The most common mistake that the fingerprint man makes, possibly, is in comparing a photostatic copy rather than a photographic copy, and there is the difference here that it is white on black instead of black on white, as it

is there, so that possibly the most serious mistake that I made was in overlooking that fact and saying that two prints were not identical when, actually, they were, when the white exhibits were checked against the black to indicate. Ordinarily identifications of latent prints are not the opinion of one person. Before the Department—and I believe this is true of most departments—there must be an agreement between two of the fingerprint men and possibly the [fol. 472] fingerprint man who did the work and his superior. The work is checked in our department, and I think most of the departments, before it is presented.

Q. Can you make an identification from the print of one finger, Mr. Rogers?

A. Can I make the identification from the print of one finger?

A. Yes.

A. Yes, if there is sufficient ridge surface there.

Mr. Safier: I think that is all.

Redirect examination.

By Mr. Roll:

Q. Mr. Rogers, counsel asked you if you took some photographs, as I understand his question, of the prints on the door, and your answer to that was no, that you received the negative, the three negatives, which you testified to on direct examination; that is correct, isn't it?

A. Yes. I received from the court certain negatives, six in all, three of which were negatives of latent prints and the other three of inked impressions.

Q. Now, in so far, Mr. Rogers, as three of these negatives of latent prints are concerned, did you actually, physically, take those three negatives and check those negatives against the actual prints which appear here on the door?

[fol. 473] A. I did.

Q. And after checking them can you state that those negatives are the actual negatives of prints from this door?

A. That is correct.

Q. Now, counsel spent considerable time this morning on cross examination about the subject of the possibility of simulating or forging fingerprints. From your examination in this case did you find any evidence whatsoever of any simulation, forgery or anything of that kind or nature?

A. Not at all; no, sir.

Mr. Roll: No further questions.

Mr. Safier: That is all.

Mr. Roll: May Mr. Rogers be excused now, your Honor?

The Court: Yes.

John B. Larbaig, recalled:

Mr. Safier: There are one or two questions I want to ask of Mr. Larbaig, your Honor.

The Court: Yes.

Cross examination (resumed)

By Mr. Safier:

Q. Mr. Larbaig, in your opinion, can fingerprints be forged and transplanted from one place to another?

Mr. Roll: Just a moment. Do you mean successfully or otherwise?

[fol. 474] The Court: Well, let's take one step at a time. You may answer the question.

Mr. Safier: I will let my question stand.

The Court: Yes, you may answer the question. I think we understand what we are getting at.

A. No, I do not believe they can successfully.

By Mr. Safier:

Q. Have you ever seen any spurious fingerprints?

A. I believe I have seen one.

Q. There have been efforts, have there not, to take fingerprints from a true set of prints and transplant them to some other object?

A. No, not that I know of myself personally.

Q. Just one other question, Mr. Larbaig: You have testified that you have been engaged in this type of fingerprint work for how many years?

A. Approximately thirteen years.

Q. Thirteen?

A. Thirteen.

Q. Now, in all of that time has it ever come to light that you have made a mistake in identification?

A. I have.

Q. Mr. Larbaig, assuming that you were given a set of prints as taken from this door, and assuming that you had on file in the Police Department a set of prints that corresponded thereto, how long would it take you to make an [fol. 475] identification?

Mr. Roll: Just a moment. I am going to have no objection to it if you will make it on a hypothetical basis, but if you are making it on the basis of what actually occurred in this case, I intend to go into the whole situation, if the court please, as to how it is done to get the prints, and with that forewarning—

The Court: Suppose you make it a little more specific. It is rather general at the present time.

Mr. Safier: I ask it in the form of a hypothetical question.

The Court: May we have the hypothetical question? I think it probably should be amplified.

Mr. Safier: I am going to assign Mr. Roll's remarks as misconduct in this case.

The Court: The jury is instructed to disregard the remarks of counsel. May we have the question, Mr. Kennelly?

(Question read.)

A. I take it for granted you mean no more than we have on this door? Do you mean three fingers or less?

The Court: You have a door there, Mr. Larbaig, and you have a fingerprint card. How long would it take you to arrive at the conclusion whether the fingerprints on the door were the same prints on the fingerprint card, or not?

A. Well, if we had ten prints of the door, if we could get a complete set of fingerprints from one hand,—

[fol. 476] The Court: I don't think you get the question yet. May I rephrase it: Suppose I handed you the fingerprint card of the defendant, also handed you this door and you start cold, in other words, I simply asked a question, as we put it here to Mr. Rogers, can you tell us whether these prints are the prints of the same person or not? How long an examination would you have to make in order to determine whether they were or were not the same?

A. Oh, I could determine that in a very few minutes.

By Mr. Safier:

Q. Now, assuming that you had a set of prints as taken from the door and sent them to the Federal Bureau of Investigation in Washington, and assuming there was on file there a complete set of prints that corresponded to the prints on the door, how long would it take you to get a report back?

A. When you mention a set of prints on the door, how many do you mean?

Q. Just the same number as were taken from the door.

A. At this time say the most three?

Q. Very well.

A. I doubt very much if we would hear from that for months.

Mr. Safier: I have no further questions.

[fol. 477] Redirect examination.

By Mr. Roll:

Q. Mr. Larbaig, generally now with reference to persons that are arrested, we will say, by the Police Department, a set of prints is taken; is that correct?

A. That is correct.

Q. On a fingerprint card; is that true?

A. That is true.

Q. With reference to the classifying and filing of these fingerprint cards in the Police Department, what is the condition at the present time with reference to whether you are up on the filing or back on the filing?

A. On the complete sets of fingerprints, all ten of the persons arrested, the filing is up to date, that is being done daily and continually at all times, but the single fingerprints in our Bureau are in arrears, oh, I would say in the neighborhood of three to three and one-half years.

Q. Why is that?

A. The manpower shortage mostly, and we just have so much other work we cannot get to them.

The Court: And you lost a couple of unusually good men within the last few years, too, haven't you?

A. That is true.

Mr. Roll: No further questions.

Mr. Safier: That is all, Mr. Larbaig.

[fol. 478] Mr. Roll: May I just ask one other question:

Q. Counsel asked you some questions about the simulating or the possibility of forging of fingerprints. From your examination of these prints is there any possible evidence whatsoever that any forgery or simulation has been made of these prints on that door?

A. No, sir.

Mr. Roll: That is all.

Mr. Safier: That is all.

Mr. Roll: May Mr. Larbaig now be excused?

The Court: Yes.

E. J. Long, called as a witness on behalf of the People, was duly sworn and testified as follows:

The Clerk: State your name, please.

A. E. J. Long.

Direct examination.

by Mr. Roll:

Q. Your name is E. J. Long?

A. Yes, sir.

Q. You are a police officer of the City of Los Angeles?

A. I am.

Q. Attached to what division, Mr. Long?

A. Wilshire Detective Bureau.

[fol. 479] Q. Were you working at that division on the date of the 25th of July, 1944?

A. I was.

Q. And did you receive a call to go to an apartment located at 744 South Catalina Street on the evening of that date?

A. I did.

Q. About what time did you arrive at that apartment, Mr. Long?

A. About 8 p. m.

Q. Did you see the lady who testified here, the landlady?

A. I did.

Q. With reference to apartment 410, how did you gain admittance to that apartment?

A. The landlady of the apartment gave me the passkey that she had. I went up to the apartment and put it in the door and opened it and went in.

Q. And did the landlady accompany you up there, or not?

A. No, she did not.

Q. Now, with reference, Mr. Long, if you now recall, did you see any newspaper around the apartment?

A. I did.

Q. And where was it when you first saw it?

A. It was laying on the floor outside of the door in the hallway.

Q. Do you remember what you did with the paper?

[fol. 480] A. I picked it up and took it into the apartment.

Q. Let me show you People's Exhibit 17, showing the position of an armchair, with some articles on it: do you recall that that is the place you placed the newspaper there on the arm of the chair (handing photograph to witness)?

A. I think it is. I am not positive that it was placed there, but I think I placed it there.

Q. Now, at the time you went into the apartment, Mr. Long, do you remember whether the lights were on or off at that time?

A. I don't remember.

Q. With reference to the folding bed in the apartment, was that folding-bed down or up?

A. It was up.

Q. In other words, you could not see it in the room?

A. No, it was not.

Q. Now, did you go into the kitchen of the apartment?

A. I did.

Q. And did you see this door which has been marked People's Exhibit 6?

A. Yes.

Q. Where was that door, Mr. Long?

A. It was leaning up against the sink in the kitchen.

Q. I show you here People's Exhibit No. 18, and I will ask you to look at that and state whether or not that fairly represents the relative position of People's Exhibit [fol. 481] 6 there in the kitchen at the time you were there?

A. It is in the same relative position that it was when I first observed it.

Q. With reference to the newspapers there, were they there when you first saw it?

A. No, they were not.

Q. With reference to which way the door was facing, that is, whether the knob of the door was out or in, can you tell us or do you remember?

A. I don't remember.

[fol. 482] Q. Now, I show you People's Exhibit 8 and I will ask you to look at that photograph and state whether or not that fairly represents what you saw there on the living room floor, the condition of Mrs. Blauvelt and what you saw at that time?

A. It is except the first part of the person that shows in the picture was not there at that time.

Q. And these pillows which are shown there, were they in that position, sir?

A. Yes, they were.

Q. With reference to what you did when you got in the apartment there, Mr. Long, will you just tell the court and the members of the jury what you did, sir?

A. When I first went in the door I seen the person laying on the floor and I went over and lifted up the pillows to see whether the person was dead or not, and after I had ascertained that the person was dead, and I wanted to see whether it was a suicide or murder,—I came to the conclusion that it was a murder, and I immediately then went to the telephone and called the Scientific Laboratory, the Homicide Squad, Mr. Brennan and Mr. Wiseman that handles the homicides in the Wilshire Detective Bureau, and also Capt. Rasmussen and I waited there until they came.

Q. Now, with reference to a fingerprint man, was there a fingerprint man called?

A. Yes, he came from the Scientific Laboratory.

[fol. 483] Q. With reference to the kitchen there where this door is located, while you were there did anyone move or touch that door until the fingerprint man came that you know of?

A. No, there was nobody—

Mr. Safer: Just a moment, just a moment.

The Court: Just a moment. Let me have the question again.

(Question read.)

The Court: The objection is overruled.

A. No. I stayed in the hallway between the kitchen and the front room and there was nobody went in there until they came.

By Mr. Roll:

Q. Now, with reference—you say you moved the pillows. After you moved them did you put them back?

A. I did.

Q. Put them back in the same position?

A. The same way they were when I first went in there.

Q. Now, with reference to the pillows, at the time you removed them did you see anything on the pillows at all?

A. Yes.

Q. Will you describe what you saw, what the appearance of it was and where it was located?

A. On the lower side of the upper pillow there was a brown spot on that that appeared to me to be blood, and it was on top of the other pillow that was underneath it. [fol. 484] On the pillow that was underneath it there was no blood between—on the upper side of that pillow.

Q. Now, how about that pillow that was next to the face?

A. The pillow that was next to the face was a soft pillow and it had blood on it on the under side.

Q. Now, so that we may—I will just use these two exhibits for the purpose of illustration. These will indicate, Mr. Long—well, we will let this be, this portion right here, be the face of Mrs. Blauvelt for the purpose or this illustration merely. This will be the first pillow.

A. Yes.

Q. This will be—I will put the second pillow crossways so you can see a little better. Now, if I understood your testimony you picked up the first pillow and you saw a brown substance on the bottom side of the first pillow; is that correct?

A. That is right.

Q. Which gave the appearance of blood?

A. It did.

Q. With reference to the then remaining pillow on the top side of the remaining pillow I believe I understood your testimony to be that there was no blood on the top side of the remaining pillow?

A. That is right.

Q. Then after you lifted the remaining soft pillow off you did see a substance there on the soft pillow which gave [fol. 485] the appearance of blood; is that correct?

A. Yes, sir.

Q. Now, from your examination of the substance which appeared to be blood what would you say with reference to it being wet or dry or the condition of it?

A. It was dry.

The Court: I think we might take our morning recess at this time. The jury will keep in mind the admonition heretofore given. We will take our morning recess.

• (Short recess.)

The Court: The record will show the jury, counsel and the defendant present, and the witness on the stand. You may proceed.

Mr. Roll: I have a photograph which I will ask to be marked People's Exhibit next in order, your Honor.

The Court: The next number is 33.

By Mr. Roll:

Q. I am going to show you People's Exhibit 33, Mr. Long, and ask you if after the garments which are depicted in People's Exhibit No. 8, that is the coat and the two pillows which you have described in your testimony there, were removed, if this fairly represents the upper portion of the body of Mrs. Blauvelt?

A. It does.

Q. And I notice that there is some object there in the general location of the neck on the photograph, right here.

A. That is a dish rag, I think.

[fol. 486] Mr. Roll: I will offer this as People's Exhibit 33.

The Court: Marked 33 in evidence.

By Mr. Roll:

Q. This is the object here that I pointed at?

A. Yes.

Mr. Roll: This is the object which the witness says "is a dish rag, I think," (exhibiting to the jury). You may cross examine.

Cross examination.

By Mr. Safier:

Q. Officer Long, what time did you arrive at apartment 410?

A. About 8 o'clock p. m.

Q. On July 25th?

A. On the 25th.

Q. Who went with you?

A. Sergt. Woodhall.

Q. Anybody else?

A. No.

Q. Was anybody in the apartment when you arrived?

A. No, there was not.

Q. And the landlady let you in with her pass-key, did she?

A. No, sir.

Q. How did you get in?

A. She gave me her pass-key down in her apartment. She said she did not want to go up there.

[fol. 487] Q. I will ask you whether or not at the time you arrived at the apartment the hall door to the garbage disposal compartment was open or closed?

A. I think it was closed; I don't remember.

Q. When you entered the apartment were the lights on or off?

A. I don't remember.

Q. Were you the first to enter the kitchen?

A. Yes.

Q. When you entered the kitchen was the kitchen door to the garbage disposal compartment unhinged from the compartment itself?

A. It was.

Q. And was standing in the position indicated on that photograph?

A. The same relative position, yes.

Q. As indicated on People's Exhibit 18; is that correct?

A. Yes.

Q. Were the black markings around this door there at that time?

A. No, they were not.

Q. Who put the newspapers under the door?

A. I don't know who put them under the door.

Q. Were they under there when you arrived?

A. No, they were not.

[fol. 488] Q. In other words, the newspapers that appear to be under that little door, as appears on Exhibit 18, were not under the door at the time you first saw it?

A. No, sir.

Q. Now, you will observe in the upper compartment garbage disposal section there appears to be some things on the shelf. Can you tell us what they are?

A. I think they are—they are a number of paper bags, used paper bags, that was put in the upper compartment.

Q. Was that the condition of that upper compartment at the time you arrived?

A. Yes.

Q. It had those things in there?

A. Yes.

Q. You testified you carried the newspaper from the hallway inside?

A. I picked it up in the hallway and took it in the apartment.

Q. Was the little chain fastening on the door, on the door to the apartment, fastened or unfastened when you arrived?

A. It was unfastened.

The Court: Which door, Mr. Safer?

Mr. Safer: The large door from the apartment to the hall.

Q. Now, you observe something white underneath the [fol. 489] shoes, as it appears in People's Exhibit 17; can you tell us what that is?

A. No, I couldn't tell you what it is.

Q. Can you state it was there at the time you first entered?

A. I don't know; I don't remember.

Q. Was the purse and packages, as appears on this Exhibit 17, in the same position in which they are now appear to be, at the time you entered?

A. The package that shows on the chair is two or three ears of corn in a package, and the purse is open and the contents of the purse had been emptied out partially, and the coin purse was standing open. And next the chair—it does not show on that picture—on the side next to the door was another package that contained some canned goods.

Q. Had you finished your answer?

A. Yes.

Q. Did you handle the shoes and parcels at all?

A. No, I didn't. There was a bunch of beads on the floor here too that I seen at that time.

Q. When you first saw the body were the arms exposed?

A. Yes..

Q. Both arms?

A. One was more than the other.

Q. Which arm was exposed more than the other?

A. The left arm.

[fol. 490] Q. In which position was it?

A. It was practically horizontal—not horizontal—at right angles to the body.

Q. In which position was the right arm?

A. It was kind of up over the right breast.

Q. Did you observe whether or not there was a watch on the wrist of the left arm?

A. Yes, there was.

Q. Was it a gold watch?

A. I don't know whether it was yellow gold or just what-kind of a watch it was; I didn't pay any attention to the kind of watch it was or anything.

Q. Could you state whether or not it was a diamond or jewel studded watch?

A. I couldn't tell you.

Q. Did you remove the watch?

A. No, I didn't.

Q. Were there any rings on the fingers of either hand?

A. I did not pay any attention to the hand to see whether there was any rings on or not.

Q. You could not state whether there were any on or not?

A. No, I couldn't say.

Q. Now, you found two pillows on the face, you testified?

A. Yes.

Q. Were they pillows that appeared to be from the davenport [fol. 491] port or from one of the chairs?

A. The upper pillow appeared to be off a chair.

Q. I see? How about the lower pillow?

A. It was just a soft pillow, and it was from some other place in the room; I don't know where it was from.

Q. I see. It was not a pillow that came from one of the cushions of the davenport or chair?

A. No, it looked like an extra pillow.

Q. How long did you remain in the premises?

A. Over two hours.

Q. Shortly after you arrived there some other police officers arrived?

A. Yes.

Q. Who arrived?

A. There was McGarry, and Brown from the Homicide Squad, and Puthoff, of the Scientific Laboratory, he is a photographer, fingerprint men, and Capt. Rasmussen, Mr. Wiseman and Mr. Brennan, from the Wilshire Detective Bureau.

Q. Was the body removed that same evening?

A. I wasn't there when the body was removed.

Mr. Safier: That is all.

[fol. 492] Mr. Roll: Just one other question if I may, Mr. Long.

Redirect examination.

By Mr. Roll:

Q. You testified with reference to the photograph counsel was showing you,—he was asking you about the package there, and he showed you People's Exhibit No. 17, and you said there was another package which is not shown in People's Exhibit 17. I now show you People's Exhibit 11 and ask you if you can see just the edge of what appears to be a package to you?

A. Yes, right on the right of the chair.

Q. The one you testified to prior is the one out here?

A. Yes.

Q. That is the one I think you said there was some corn in?

A. I think there was two or three ears of corn and the other was some canned goods and a half pound of butter or a quarter pound of butter.

Mr. Roll: (Exhibiting to jurors.) Here is People's Exhibit 17 and here is People's Exhibit 11, the one described, and this is the package over on the edge. That is all, Mr. Long.

The Court: Just one question, Mr. Long: What is the fact as to whether or not you moved anything in or about the place before the other officers arrived?

A. No, there was nothing moved by me, nor did I permit [fol. 493] anybody to move anything until the other officers arrived.

The Court: That is all.

Mr. Safier: That is all.

Mr. Roll: That is all. May Mr. Long be excused now, if the court please?

The Court: Yes.

Mrs. MARIE MASSEY, called as a witness on behalf of the People, was duly sworn and testified as follows:

The Clerk: What is the name, please?

A. Marie Massey.

The Clerk: Mrs. Marie Massey?

A. Yes.

Direct examination.

By Mr. Roll:

Q. Your full name, please?

A. Marie Massey.

Q. Where do you live, Mrs. Massey?

A. 744 South Catalina.

Q. Are you the daughter of the lady who was the manager there of the apartment house?

A. Yes, I am.

Q. You live there in the same apartment, do you?

A. Yes, sir.

[fol. 494] Q. You live in the same apartment with your mother or a separate apartment?

A. With my mother.

Q. Directing your attention to a lady by the name of Mrs. Blauvelt: Did you know Mrs. Blauvelt during her lifetime?

A. Yes, I did.

Q. Did she occupy apartment 410 there in the last approximately a year prior to the 24th day of July?

A. Yes, sir.

Q. And directing your attention now to the date of the 24th of July, 1944, sometime along in the afternoon of that date, did you have occasion to see Mrs. Blauvelt?

A. Yes, I did.

Q. About what time would fix that, please?

A. Well, I could not say exactly; between 2 and 3:30; probably 2:30 to 3:30.

Q. Where were you when you observed her?

A. Well, I was just coming out of our apartment and our apartment is facing the lobby, and she was going through and we spoke together quite a few minutes.

Q. I cannot hear you.

A. She came in and I was just in front of our apartment, in the doorway; she came through and we spoke for a few minutes and then she went on. She was going to take the elevator and she met mother and spoke with mother a few [fol. 495] minutes. She must have been with us about 10 or 15 minutes.

Q. Did she have some packages?

A. Yes, sir.

Q. Was that the last time you saw her alive?

A. Yes, sir.

Q. Your mother was there at that time?

A. Yes, we were both there.

Q. With reference to her clothing, can you describe with reference to whether or not she had a coat on?

A. Yes, she had her coat and her hat. She always wore coats and hats whenever she went even to the grocery store.

Q. Do you recall the color of the coat?

A. It was navy blue and the little hat was navy blue trimmed in a light blue.

Q. I am going to show you a photograph particularly of the sleeve of a coat. Does that appear to be it?

A. Yes, it was a plain coat, no fur on it.

Q. That is People's Exhibit 33. In this conversation that you had with her there was there anything said by Mrs. Blauvelt whatsoever as to anything wrong with her apartment or the little garbage disposal door?

A. No, there was not.

Mr. Safier: Just a moment. I object to any conversation.

The Court: The objection is sustained and the answer stricken out.

[fol. 496] By Mr. Roll:

Q. I will ask you this and you can answer yes or no: Did she make any complaint to you about anything?

A. No, sir.

Q. Now, directing your attention to that day, and earlier in that day, do you know whether or not the back door of the apartment which leads out into the alley was open or not?

A. Yes, it was.

Q. How do you know that?

A. Because I spent most of the morning and early afternoon out there myself.

Q. Where?

A. Well, I did quite a bit of washing and the washroom is in the basement.

Q. Where is the washroom located?

A. It is in the back of the building in the basement.

Q. Downstairs in the basement?

A. Yes, and then I went up the stairs to the first floor and went out and hung my clothes outside and I did that several times because I washed several blankets.

Q. Were you in your own apartment at any time during that afternoon?

A. Yes, between—I imagine 1 to probably 4.

Q. I don't know whether you understand my question or not with reference to your own apartment?

A. Yes.

[fol. 497] Q. Did you go in your own apartment?

A. Yes, about 1:30, I should judge.

Q. How long did you stay in your apartment?

A. Well, I imagine until about 4 o'clock, probably.

Q. Now, where were you when you saw Mrs. Blauvelt?

A. I was right in front of the door that leads to my apartment.

Q. So you were not in the back end of the apartment during that time?

A. No, but the door was open, it was wide open. We leave it to have a little fresh air to the hallway.

Mr. Roll: You may cross examine—oh, just one other question, I am sorry, counsel, if I may ask this question:

Q. With reference to the keys to the apartment house there other than the pass-key, do I understand you correctly that each tenant is furnished with a key to their apartment?

A. Yes, sir.

[fol. 498] Q. And that same key will open the front door?

A. The front and back door.

Q. The front and back door. Their key, so far as their respective keys are concerned, is only good to the individual apartment?

A. Yes, sir.

Q. Now, did Mrs. Blauvelt have a key?

A. Yes, sir.

Q. Have you ever located that key?

A. No, none of us have.

Mr. Roll: Cross examine.

Cross-examination.

By Mr. Safer:

Q. What date was it that you last saw Mrs. Blauvelt alive?

A. I think it was on Monday, the 24th.

Q. What month?

A. July.

Q. Will you tell me again what time of day it was?

A. Well, I could not say because I did not look at the clock, but it was in the afternoon between 2 and 3:30, somewhere along there; probably it was 3.

Q. Between 2 and 3:30?

A. I could not tell you the time exactly.

Q. Just where was it that you saw her?

A. In the lobby of the Pandora Apartments.

[fol. 499] Q. In the lobby?

A. Yes, and later on I saw her in front of the elevator just a few feet away talking to my mother.

Q. It was between 2 and 3:30 that you saw her in the lobby of the apartment?

A. Yes, I think it was nearer 3:30 because mother was putting away her laundry, a few linens in the closet, and the laundryman comes in the afternoon around 3 o'clock.

Q. Were you in the lobby at that time?

A. I was there at the time but I did not notice what time it was.

Q. Then it is not true, is it, that you were in your own apartment from 1:30 until 4 o'clock?

A. Well, my apartment is right off the lobby. I was around in there in the front part of the building during that time.

Q. It is not true that you remained in the inside of your apartment from 1:30 to 4 o'clock?

A. No, not there, but I was not in the back part of the house during that time.

Q. I see. Was Mrs. Blauvelt coming into the building or going out?

A. She was coming home, coming to the building; she had been downtown.

Q. What time of the morning was it that you were in the back part of the building?

[fol. 500] A. Well, I could not say. Between probably 10:30 and about 1:30 or 2 o'clock; I didn't notice the time.

Q. About 10:30 to 1?

A. Yes. I had a late lunch that afternoon because I was busy.

Q. 10:30 until about what time?

A. Probably 1 or 1:30.

Q. You did not at any time see this defendant about the building?

A. No, I did not.

Q. Let me ask you: All your tenants in that building are white people, aren't they?

A. Yes, sir.

Q. You didn't see a colored man around there that day, did you?

A. No, I did not.

Q. After you saw Mrs. Blauvelt in the lobby where did you go from there?

A. I don't remember.

Q. I beg pardon?

A. I don't remember. I must have stayed in the front part of the house, probably my apartment; I don't remember.

Q. Might you have gone back to the back of the house?

A. No, I don't think I did.

Q. Did you go back to the back part of the house at all any more that day?

A. I don't remember. I don't think I did, because I was [fol. 501] through with my work in the back part.

Q. You are not sure?

A. I don't remember going out.

Q. When was it you saw your mother talking to Mrs. Blauvelt by the elevator?

A. On Monday.

Q. What time?

A. Well, it must have been between 2 and 3; I don't know exactly the time, but it was between 2 and 3 or 3:30.

Q. Was it right after you spoke to Mrs. Blauvelt in the lobby?

A. Yes, and I was with her when she talked to my mother a few feet away.

Q. Your mother was doing something with the linens out in the hall?

A. Mother was taking care of that.

Q. What was it your mother was doing with the linens?

A. The laundry brings back the linens in the afternoon and there is a closet immediately across from the elevator, and she was counting them and putting them away.

Q. How long had your mother been out in the hall?

A. Oh, we were both out there most of the afternoon.

Q. Your mother was out in the hall most of the afternoon?

A. I mean the front part of the house.

Q. Now, you can see from the front part of the house down the hall to the back door, can you not?

[fol. 502] A. According to where you stand.

Q. Well, if you are standing by the elevator.

A. Yes, you can then.

Q. You could also hear the back door open?

A. No, the door was open and we could not hear a sound.

Q. It was standing wide open?

A. Yes, but there is a screen door.

Q. I see. There is a screen door?

A. There is a screen door and then the other door. (The screen door was closed but not latched, that is just closed, and the other door was open.

Q. From the lobby, the front part of the building, you can hear the screen door close, can't you?

A. No, sir.

Q. Doesn't that screen door slam after somebody opens it?

A. No, it has one of these—I forget what you call them—door checks.

Q. If somebody comes in through that screen door and walks along—withdraw that. How far is it from that screen door to the foot of the back steps?

A. Just a few feet; probably 10 or 15 feet.

Q. 10 or 15 feet?

A. Maybe not that far.

Q. Is that a carpeted hall?

A. Yes, fully carpeted.

[fol. 503] Q. If you are standing by the elevator and somebody comes in that screen door and walks across to the steps, can you hear them?

A. No, sir.

Q. You can see back to the screen door from the elevator, can't you?

A. Well, the hall is rather dark. You could see a shadow but you could not tell who it is, if someone should come in. But we are not there all the time.

Q. Was the hall dark in the afternoon?

A. Yes, quite dark on the first floor.

Q. How far is it from the lobby to the screen door in the back?

A. I wouldn't know. Probably 125 feet, or more.

Q. What?

A. Maybe 125 feet.

Q. 125 feet?

A. It is almost the length of the building.

Q. Is the elevator in the middle—

A. The front part.

Q. —in the middle or in the front part?

A. In the front.

Q. Now, how long did you say your mother had been out there?

A. I beg your pardon?

Q. How long had your mother been there arranging the [fol. 504] linens?

A. It wouldn't take ten minutes. We spoke to Mrs. Blauvelt; maybe she was there 20 or 25 minutes.

Q. You and your mother were in and out of your—strike that. You and your mother live in the same apartment?

A. Yes, sir.

Q. When you were in your apartment that afternoon between 1:30 and 4 o'clock, had your mother been in there all the time?

A. Yes. We had our lunch and we talked, and I laid down about 20 minutes, I think it was, and I went out and spoke to Mr. Heck; I met him in the lobby.

Q. Your mother watches for everybody that comes in and out of the building, doesn't she?

Mr. Roll: I object to that as calling for a conclusion.
The Court: Objection sustained.

A. Well, she is very—

The Court: Objection sustained. You do not have to answer that.

By Mr. Safier:

Q. Was the time that your mother was arranging the linens by the elevator the only time during the afternoon she was out in the hall?

Mr. Roll: I object to that—

A. The only time I remember of her being out there.

Q. The only time you remember of her being in the hall. Was your mother out talking with Mr. Heck, too?

[fol. 505] A. I don't remember if she was or not; she may have been; I don't remember that. I know I talked to him.

Q. Were you on the fourth floor at any time that afternoon?

A. I don't—I must have been—I always go through the house between 9:30 and 10 o'clock.

Q. No, in the afternoon.

A. I don't remember that.

Q. You don't recall whether you were or not?

A. No. I don't think I did, unless probably later in the evening. I left a note for Mrs. May, but that was rather late in the evening.

Q. Did you see anything of a strange woman around the building at any time?

A. No, sir.

Q. Had you heard anything about a strange woman being seen around the building?

Mr. Roll: I object to that on the ground it would be hearsay.

The Court: Sustained.

By Mr. Safier:

Q. Did any of the tenants report or say anything about a strange woman being seen around the building?

Mr. Roll: I object to that on the ground it would be hearsay.

The Court: Sustained.

[fol. 506] Mr. Safier: I think that is all.

Mr. Roll: That is all. May this lady be excused?

The Court: She may be excused.

(Witness excused.)

MRS. ISABEL TURNER, called as a witness on behalf of the People, was duly sworn and testified as follows:

The Clerk: State your name, please.

A. Mrs. Isabel Turner.

Direct examination.

By Mr. Roll:

Q. Mrs. Turner, where do you live, please?

A. 2441 Crenshaw Boulevard.

Q. Is there a Mr. Turner?

A. Not here.

Q. Directing your attention to your employment, where do you work?

A. Manager of the library in Bullock's.

Q. That is a lending library there in Bullock's?

A. Yes.

Q. How long have you been there at Bullock's?

A. It will be three years in January.

Q. Did you know a lady by the name of Stella Blauvelt?

A. Yes.

[fol. 507] Q. Was she one of your customers?

A. She was one of my customers.

Q. Directing your attention to the date of the 24th of July, 1944, did you see Mrs. Blauvelt on that day?

A. Yes. I have an independent recollection of seeing her, and I also have the book that she took out on that day, with the date.

Q. Do you have the book here with you?

A. Yes.

Q. You refer to a book known as "D-Day"?

A. That is right.

Q. About what time would you say you saw her?

A. About 11:30.

Q. About 11:30?

A. Yes.

Q. Now, on the inside of this book, there is a little compartment here and in the little compartment there is "Bullock's Book Club"—that is printed on there, and notice down under the date of the 24th of July there is written, in ink, "Blauvelt"—is that correct?

A. That is correct.

Q. Is that your writing?

A. That is my helper's writing. We were both standing there. She gave her the book.

Q. You say in addition to this date you have an independent recollection of her being in there; is that [fol. 508] correct?

A. Yes, I remember seeing her.

Q. Now, how long would you say you had been waiting on her when she came in there?

A. You mean at that time, on that date?

Q. No, no. I mean previous to that time.

A. She had been a member ever since I had been in the library. She was a member of the library before I took over.

Q. Now, with reference to this date of the 24th, what, if anything, can you tell the court and the members of the jury as far as Mrs. Blauvelt is concerned, as to whether or not she was wearing any rings?

A. She was wearing more than one.

Q. With reference to the rings—when you say more than one, how would you describe the rings?

A. Well, there was one, I know, was a big stone; we noticed these rings very particularly, the three of us. There was—there was another one that I cannot describe.

Q. When you say a big stone—

A. Yes, a big carat diamond.

Q. That was the last time you saw her alive?

A. Yes.

Q. About what time of day do you fix that, again?

A. Around 11:30.

Q. In the morning?

[fol. 509] A. Yes.

Mr. Roll: You may cross-examine.

Cross-examination.

By Mr. Safier:

Q. How many rings did you say Mrs. Blauvelt wore on that occasion?

A. Well, as I say, I haven't a recollection of more than two: Previous to that she always seemed to—we were always impressed with the idea of the number of rings on her hand. But I do remember seeing two on that day; I mean, I can recall that.

Q. When you say that you were impressed at times with the number of rings, do you mean to say on some occasions she was wearing more than two?

A. As I say, I don't want to swear to that now. But that is the idea that we have, that she always had rings on both hands.

Q. She had rings on both hands?

A. Yes. But, as I say, I couldn't swear to that on that day. That is the impression that we had; that is what we commented on at the time.

Q. Would you say whether she had rings on both hands on July 24th?

A. No.

Q. But you are certain she had those two rings on one hand?

[fol. 510] A. Yes.

Q. Referring to the two rings that you saw on the one hand, which hand was it?

A. Ring finger, left.

Q. Left hand?

A. Yes.

Q. You have indicated your left hand?

A. That is right.

Q. Were they both on the same finger?

A. Yes.

Q. Was one of them a wedding band?

A. No, I don't think so.

Q. You didn't see any wedding band?

A. No; I didn't see any wedding band. I have a recollection of a large carat and another ring, but not a wedding ring.

Q. How about a wrist watch?

A. That I couldn't say.

Q. You don't remember that?

A. No.

Q. It was about 11:30 that you saw her at the book department in Bullock's?

A. Yes, on the fourth floor.

Q. Was she alone?

A. Yes.

Q. Was she wearing a blue coat at the time?

[fol. 511] (Witness shakes head negatively.)

Q. You don't remember?

A. No.

Mr. Safier: That is all.

Redirect examination.

By Mr. Roll:

Q. The Bullock's that you are at is the one down at Seventh and Broadway?

A. Yes.

Mr. Roll: That is all. May the lady be excused?

The Court: She may be excused.

(Witness excused.)

Mr. Safier: Mrs. Massey is still in the courtroom. I neglected to ask her one or two questions, your Honor.

The Court: You may do so.

MRS. MARIE MASSEY, resumed the stand:

Cross-examination.

By Mr. Safier:

Q. Mrs. Massey, you knew Mrs. Blauvelt for how many years?

A. Almost three years.

Q. Almost there years?

A. Yes.

Q. Did she have any callers from time to time?

[fol. 512] A. Any what?

Q. Did she have any callers from time to time?

A. Very, very seldom.

Q. Very seldom?

A. Mostly women, or a husband and wife she had known for a long time, like Mr. and Mrs. Watts.

Q. Didn't she have any gentlemen callers?

A. No.

Q. You never saw any?

A. No, she never did have, I am sure of that.

Q. Have you ever seen any men go in her apartment and visit with her at all?

A. No, even with her business she would go downtown, to her banker or her lawyer. She never had anyone come to the apartment.

Q. She did have guests, however, from time to time?

A. Occasionally. She belonged to a foursome, and some guests in the apartment house would come to her apartment occasionally.

Q. Had you ever seen her go out with any gentlemen?

A. I never have.

Q. You never saw any men go into her apartment?

A. No; I am sure of that.

Mr. Safer: That is all.

Mr. Roll: That is all. May the lady be excused?

The Court: She may be excused.

[fol. 513] Mr. Roll: I was going to excuse this lady, but counsel indicated he wanted her mother back for some additional questions. In excusing her I was going to have her tell her mother to come in. Do you want her, Counsel?

Mr. Safer: No.

Mr. Roll: You may be excused.

(Witness excused.)

[fol. 514] WILLIAM H. BRENNAN, called as a witness on behalf of the People, was duly sworn and testified as follows:

The Clerk: State your name.

A. William H. Brennan.

Direct examination.

By Mr. Roll:

Q. Your full name is William H. Brennan?

A. Correct.

Q. You are a police officer of the City of Los Angeles?

A. Yes, sir.

Q. Attached to the Wilshire Detective Bureau?

A. Yes, sir.

Q. On the Homicide Detail there; is that correct?

A. Yes.

Q. Were you working as such on the date of the 24th of July, 1944?

A. Yes, sir.

Q. Who was your partner?

A. Sergt. G. H. Wiseman.

Q. The gentleman seated here at my right?

A. That is correct.

Q. On the evening of that date did you receive a call to go to 744 South Catalina Street?

A. I did.

Q. About what time did you arrive there, Mr. Brennan?
[fol. 515] A. I arrived there approximately at 8:15 p. m.

Q. Did you go to apartment 410?

A. I went to apartment 410.

Q. Was Mr. Long already there, the officer who just testified here?

A. Yes; Mr. Long was already there.

Q. Do you recall whether any other officers were there or not?

A. Yes, there were two officers from downtown, officers McGary and Brown, I believe.

Q. Now, at the time you arrived there, with reference to the condition of the room, I show you People's Exhibit 8; is that a fair representation of what you observed in so far as the lady whom you later learned to be Mrs. Blauvelt, is concerned?

A. Yes, that is a fair representation.

Q. All right. Now, were you there when the coverings were taken off of the body?

A. I was.

Q. Were you also there when the pillows were taken off?

A. I was.

Q. Now, can you describe, sir, with reference to the pillows what you observed concerning the pillows and any substance on the pillows and where it was located?

A. Well, I noticed when I removed the large pillow, which is a pillow that appeared to have come off an over-[fol. 516] stuffed chair—it was a heavy cushion—I noticed on the bottom side of the cushion a spot of what I thought

was blood, which appeared to be blood to me and on the top of the pillow there was none. I removed the pillow, set it to one side, and I noticed then that on the top of the second cushion, which was a red cushion, there was no stains that I could observe from the naked eye. I removed the second cushion, uncovering the base of the body, and on the bottom of the red pillow I noticed another spot of blood, or what appeared to be blood, a brown substance.

Q. With reference to the blood that you observed there, what was its condition to whether it appeared to be wet or dry or sticky?

A. The blood on the large cushion was thoroughly dry, I say what appeared to be blood, and on the second—on the bottom cushion it also appeared to be quite dry.

Q. Now, People's Exhibit 33 I now show you here, showing the top portion of the body of Mrs. Blauvelt; is that the way it appeared in so far as the top portion is concerned after you did remove the pillows?

A. This is after the pillow and the coat was removed. There was a brown coat over the lower portion of the body.

Q. This photograph here, the view which is taken, People's Exhibit 33, only gives a portion of the left arm, it does not show the light cord which runs under there. I don't believe either, does it?

[fol. 517] A. No, it does not.

Q. Can you describe in your own language with reference to the appearance of the face and neck, what you observed after you got the pillows off?

A. When the pillows—when I removed the pillows I noticed just over the neck underneath the pillows was a brown mesh rag, very often used as a dish rag, and in removing the dish rag I noticed underneath that a cord wrapped around the neck three times and tied in a knot; the right arm was extended upward in this manner (indicating), with the palm up; the left hand was at right angles to the body in this manner (indicating).

Q. Now, with reference to the left hand—and I believe it is depicted here on People's Exhibit 8—I notice on the left hand there appears to be a wrist watch; did you observe that?

A. I observed the wrist watch, and I noticed the band—the band of the wrist watch was open; it had a black cloth band on it, and this band was open, or the catch on the

band was open, and I noticed the watch had stopped at 10 minutes past 2.

Mr. Safier: I did not hear the last part of that answer.

A. The wrist watch had stopped a little after 2; I believe it was 10 minutes after 2.

By Mr. Roll:

Q. Directing your attention to the left hand, what if [fol. 518] anything did you observe with regard to any rings on the left hand?

A. The left hand was closed with the palm up, and it had a wedding ring, yellow band wedding ring on the ring finger.

[fol. 519] Q. No diamonds whatsoever?

A. None whatever.

Q. This picture here, People's Exhibit No. 8, fairly depicts the left hand there, the watch and the one ring; is that correct?

A. Yes, that is just like it was when I arrived.

Q. Now, I notice on People's Exhibit No. 8 that there is some cloth of some kind or character over the body. What is that?

A. Well, that is a coat, a lady's tan or light brown coat.

Q. And that is the one which was thrown over the body here, you mean?

A. That is right.

Q. With reference to—

The Court: Let me clear that up. Was that coat over the body at the time your first saw it, Mr. Brennan?

A. Yes, it was over the lower portion of the body.

Mr. Roll: This is the one he refers to, the tan or brown coat (exhibiting photograph to the jurors).

Q. Then there is another coat that Mrs. Blauvelt had on; is that correct?

A. Yes, there was.

Q. And that is reflected here in the top portion of People's Exhibit 33?

A. Yes.

[fol. 520] Q. Do you remember the color of that coat?

A. It was a blue coat, a navy blue coat made of some kind of light material like rayon or silk; it was not really silk; it was more of a rayon coat.

Q. This is the one you refer to here?

A. Yes, sir.

Q. Now, with reference to the chair, People's Exhibit 11, does that photograph fairly depict what you saw when you arrived there?

A. Yes, that is exactly as it was when I arrived.

Q. I notice there is a purse there; is that correct?

A. That is correct.

Q. Now, was there a coin purse around there somewhere?

A. There was a coin purse open—sitting right in the opening of the large purse.

Q. Are the shoes depicted there?

A. The shoes are there as they were.

Q. I notice there is a package up there. Do you know what was inside of that package?

A. Two ears of corn.

Q. There is a small mark, just on the edge, down here; is that another package?

A. Yes, as I recall, there was one package that had an ear of corn—pardon me, there was one package with a can of some kind of corn or peas and another can that had something in it, a quarter pound of butter, and then there [fol. 521] was a small package, I don't recall it was some kind of fresh vegetables in it, string beans or something of that nature. I am not too clear on that, but it seems like there was a third package, a small package.

Q. Now, with reference to the light cord which you have described as some of it being around the neck of Mrs. Blauvelt, and a portion of it going to her body, when you got down to the other end of this light cord, not the end around the body, but the other end, was that actually attached to something, or had it been jerked loose from something?

A. No, it was attached to a stand lamp, and in examining the stand lamp I noticed that the top ball of the lamp was broken off.

Q. What do you mean by the top ball of the lamp?

A. Well, the shade on the top of the lamp, there is a ball which screws on the top, and the top of that was sort of some kind of ornament, and that had been broken off and it looked freshly broken.

Q. With reference to this lamp, it would be over in this location somewhere?

A. Yes, right near the door, the door leading into the hallway that goes to the kitchen.

Q. People's Exhibit 17, does that show at least the top portion and base of the lamp?

A. Yes, it does, right there it shows it.

[fol. 522] Mr. Roll: If I may indicate that to the jury? He is indicating the top portion and this is the base down here (exhibiting photograph to the jurors).

The Court: What number exhibit is that, Mr. Roll?

Mr. Roll: No. 17.

The Court: I think I will mark that in evidence.

Mr. Roll: I thought it was.

The Court: No. 16, 17, 19, and 20 are not in evidence. They are all marked in evidence.

Mr. Roll: This is the top portion of the lamp, and the base of the lamp and the cord (exhibiting photograph to the jurors).

Q. Now, Mr. Brennan, with reference to after the garment, the coat, the tan coat, was removed from the body there, we will now take the lower portion of the body of Mrs. Blauvelt, and I will ask you this first, with reference to shoes or stockings, did she have any shoes or stockings on?

A. She did not.

Q. With reference to her dress itself, what was the condition of her dress? Was it pulled down as far as her knees or was it pulled up or what?

A. It was up around her waist with her panties showing.

Q. With reference to what we might—could you indicate possibly by pointing on me, along my leg here, about how high the dress came, wherever it was?

[fol. 523] A. About right here, it was on a slant.

Q. Indicating on the left side, one side at least about the hip bone; is that correct?

A. Yes, and then down lower, about 4 inches, on the other side.

[fol. 524] Q. With reference to the undergarments that Mrs. Blauvelt had on, were those also pulled up?

A. The panties was torn at the crotch, that is the crotch was torn out and laid up over the top of the dress.

Mr. Roll: I have here a photograph, if the court please, that I ask be marked People's Exhibit next in order for identification.

The Court: That will be 34.

By Mr. Roll.

Q. I direct your attention to People's Exhibit 34: Does that fairly illustrate, Mr. Brennan, the torn condition of the pants that you have referred to in your testimony?

A. Yes, it does on the left side.

Q. If I understand you correctly in so far as the dress is concerned, the dress was as you have described in your testimony here to me a little lower; is that correct?

A. Yes, sir, I remember the dress was a little lower than that pictured. That dress was pulled up slightly to get a better picture of the panties that were torn.

Mr. Roll: I offer this in evidence, if the court please.

The Court: Marked 34 in evidence.

By Mr. Roll:

Q. About how long would you say you were around there, Mr. Brennan?

A. I should say about three hours.

Q. Were you there when the fingerprint man was there?

A. I was.

[fol. 525] Q. Did you make any search there of the premises then or later on for any rings?

A. We did.

Q. Did you make any search that night?

A. We did.

Q. Where did you search?

A. We searched through the writing desk, through the dressers, in her purse and in the clothes closet and where we found her jewelry boxes, we looked through the jewelry boxes and we found considerable jewelry, mostly what appeared to be costume jewelry to me, but found no rings of any kind.

Q. Now, did you either at that time or later on make a search for a key to the apartment?

A. We did.

Q. Did you find any key at any time?

A. We were unable to find any.

Q. Did you accompany the administrator and his wife over there, Mr. and Mrs. Watts?

A. Yes, we did.

Q. That was about the 31st of July?

A. Approximately, yes.

Q. Was there a search made at that time in their presence?

A. There was a search made at that time and they searched the apartment. Mrs. Watts did know the type [fol. 526] of rings and she was looking for the particular type. I may correct myself. I said rings of any kind. I mentioned there was some costume jewelry, cheap rings like green settings and so on, but no diamond rings is what I was referring to, no diamond or white stone rings about the place. At the time that Mr. and Mrs. Watts and their attorney was there we made another complete search of the apartment that took us approximately an hour and a half or two hours and we were unable to find any rings, that is any white stone rings or diamond rings.

Q. Did you find any key to the apartment?

A. No, not any.

Q. Now, at the time you arrived there, Mr. Brennan, that particular evening on the 24th, was it dark or light at that time, as you remember?

A. It was dark.

Q. I take it the lights were on in the apartment; is that true?

A. The lights were on in the apartment.

Mr. Roll: Would this be a convenient place to take our recess, your Honor?

The Court: We will take a recess at this time. The jury will keep in mind the admonition heretofore given not to talk about the case or form or express any opinion until it is finally submitted. Recess until 1:45.

(Whereupon a recess was taken until 1:45 o'clock p. m. of the same day, Monday, November 20, 1944.)

[fol. 527] Monday, November 20, 1944; 1:45 o'clock P. M.

The Court: Let the record show the jury, counsel and defendant present. You may proceed. Mr. Brennan was on the stand.

WILLIAM H. BRENNAN, recalled:

Direct examination (resumed).

By Mr. Roll:

Q. Now, Mr. Brennan, with reference to the body of Mrs. Blauvelt lying there on the floor after the object which you described as having the appearance of a dishrag was removed from the neck, did you see a portion of a strand of beads?

A. Yes, I did.

Q. In addition to the portion of the strand of beads that were around the neck, were there any other loose beads there on the floor?

A. Yes, the strand of beads that was around the neck had been broken and there was quite a number of the beads scattered about the floor.

Q. Were you there when the body was actually moved?

A. I was not.

The Court: By the way, I do not think that Exhibit 7 ever was identified. I do not think Exhibit 7 was particularly identified at any one time. It was referred to, that is the beads marked Exhibit 7, but they have not been particularly [fol. 528] identified by anyone.

Mr. Roll: That is correct, and also the light cord.

The Court: That is No. 5.

By Mr. Roll:

Q. I am going to show you here a light cord, Mr. Brennan, which Dr. Webb brought in. Is that the light cord in this case?

A. Well, I did not mark the light cord at the time, but it is a light cord similar and identical with the one that was around the neck.

Q. Well, do you know this, Mr. Brennan, whether the light cord that was found there was brought into the preliminary examination and introduced in evidence there?

A. I believe it was, but I don't know.

The Court: I see. All right.

By Mr. Roll:

Q. I will show you here a strand of beads which have been marked People's Exhibit 7 for identification. Does

that give the appearance of the beads or a portion of them around the neck of Mrs. Blauvelt?

A. Those here look exactly like the beads that were around her neck.

Mr. Roll: I now offer the beads in evidence, if the court please, and also—

The Court: 7 in evidence.

Mr. Roll: And also the light cord.

The Court: 5 in evidence.

By Mr. Roll:

Q. Now, with reference to the purse or pocketbook, [fol. 529] Mr. Brennan, did you see the pocketbook there in the position which is shown in the photograph here?

A. Yes, I did.

Q. What, if anything, did you notice with reference to the pocketbook or purse?

A. I noticed that the pocketbook was opened, that is, the large pocketbook was opened and it had a small coin purse right at the entrance of it and it was opened and appeared to be empty. The articles from the pocketbook were strewn on the chair. In addition there was a handkerchief with some blood on it on the chair, or what appeared to be blood.

Q. Now, one other thing with reference to this dishcloth or dishrag which you have testified was on the face of Mrs. Blauvelt, down around the neck as shown here in the photograph, at any rate, did you look at that to see whether or not that had the appearance of having or not having any blood on it?

A. Yes, I examined it very closely and there was no indication that there was any substance on it that appeared to be blood.

Q. Now, Mr. Brennan, directing your attention to the defendant, do you know on what day the defendant was arrested?

A. The defendant was arrested on August 24, 1944.

Q. Did you see him shortly after he was arrested?

[fol. 530] A. I saw him within an hour after he was arrested.

Q. Where did you first see the defendant on that occasion?

A. I first saw the defendant at the University Police Station.

Q. About what time?

A. Approximately 3 a. m.

Q. On what charge was he booked at that time?

A. He was booked on suspicion of murder.

Q. Was there any conversation you had with the defendant at that time concerning his booking slip?

A. Yes, there was.

Q. Go ahead and relate it.

A. When the defendant was booked the desk sergeant asked, "What is the charge?" and the booking—the man who booked him, Officer Towns, said, "Suspicion of murder." The defendant says, "Oh, not me." They went ahead and booked the defendant and the defendant was searched; after the defendant was searched the slip—booking slips were torn out of the machine and one copy of the booking slip was handed to the defendant on the desk and he pushed it away and he says, "Oh, no, you aren't going to put no murder on me," and he threw the booking slip on the floor.

Q. Now, Mr. Brennan, I am going to ask you concerning some conversations, and in relating those conversations would you give just the facts as they pertain to this case? [fol. 531] Is that clear, Sir?

A. Yes.

Q. Directing your attention to later on, on the 24th, at the Wilshire station, or it may have been University, did you have some conversation with him?

A. We had no further conversation at the Wilshire police station, but on the way—well, just before we left—at the Wilshire police station he was asked—not the Wilshire but University police station; Sgt. Wiseman asked the defendant what his address was, and he said 911 North Beverly Drive, Beverly Hills. Then we went out and got in the police car and took the defendant back to the Wilshire division for rebooking into the Wilshire station, and at that time Sgt. Wiseman asked him what his address [fol. 532] was again, on the way over, and he stated that he lived at 855 East 28th Street, I believe was the address.

Q. Go ahead.

A. That was about all the conversation that we had pertaining to this case with him on that evening, or that morning, before booking him and turning him over to the jailer at Wilshire.

Q. Now, directing your attention to the daytime—you said you saw him around 3 a. m., the daytime of that same day, did you have occasion to have the defendant in an automobile in the vicinity of the apartment house here located at 744 South Catalina?

A. Yes, we did.

Q. On what street were you in a car with the defendant?

A. At that time we put the defendant into a car from the Wilshire Station and we drove to several locations on the west side, pertaining to other matters, but at one time we drove to Eighth and Catalina.

Q. All right. What happened when you got at Eighth and Catalina?

A. At Eighth and Catalina I stated to the defendant, I said, "Have you ever been on this street? Are you acquainted on this street?" He said, "What street is this?" I said, "This is Eighth and Catalina." I said, "I am speaking about the apartment house at 744 South Catalina. Was you ever at that apartment house?" He said, "I [fol. 53:3] wasn't." Sergt. Wiseman further asked him if he had ever worked there as a janitor or had any acquaintance there, and he said he had not, that he had never been on that street, nor had he ever been on Catalina Street. I further asked him if—if on his way—if he lived on the east side, I said, "If on your way to Beverly Hills to work, didn't you have occasion to cross Catalina Street?" "Well", he said, "I might have crossed it but," he said, "if I did, I don't know."

Q. All right. Now, after that occasion when was the next conversation you had with the defendant?

A. The next conversation we had with him was in front of 855 East 28th Street, where he had told us—previously answered that he had lived. While there in the car at that place, Sergt. Wiseman had stepped out of the car and had went up to the door to speak to the people who lived there, who we later learned were his wife, and at that time, why, he told me that he had had a death at his—a half-brother or his step-brother—I have forgotten which—had died;

and I asked him where he was buried from, and he said he was buried from the Peoples' Funeral Parlors. I asked him what his name was, and he said his name was Nissy Ross. That was about the extent of the conversation we had at that time.

Q. All right, go ahead.

A. We then had other conversations pertaining to other [fol. 534] matters. On the way back—we went back to the Wilshire Police Station—

Q. All right, go ahead. We took the defendant upstairs into the Wilshire Police Station, and at that time Sergt. Wiseman and myself and the defendant was present in—there was a couple of other officers around; I don't recall their names at this time—at that time the defendant was asked again if he didn't have another address that he was living at the present time, and he said that he didn't have any other address. But just before we took him upstairs, if I may retrace my steps—just before we took him upstairs he stated before we got out of the car, "well," he said, "I made one mistake. I told you my brother—my step brother's name," and he said, "You will go to the funeral parlors and find out all about my relations, anyway, so I might just as well tell you the fact." But he didn't tell us where he lived—

Mr. Safer: I did not hear that.

By Mr. Roll:

Q. Talk a little louder.

A. He didn't tell us where he lived nor did he tell us where his relations lived. Then we went upstairs into the detective bureau, and at that time I asked the defendant if he was ready to tell us the whole story and he said, "I haven't got anything to say," so I then told him that in the apartment at 744 South Catalina that we had found fingerprints in the apartment that corresponded with his, [fol. 535] and that they were his fingerprints and he must [fol. 536] have put them there if they were his prints. "Well," he said, "I never was in that apartment, and they are not my prints, and if they correspond to my prints somebody else put them there, because I was not in that apartment." I said to him, I said, "Well, you must have been in the apartment because there isn't anyone else could put your

prints in there but yourself and" I said, "they are definitely your prints." He said, "No, they are not my prints because," he said, "if they look like mine," he said, "somebody else put them there." I then went over and got the door, I think it is People's Exhibit 6—

Q. 6, the one here in evidence.

A. People's 6 in evidence, and I took the door out of my locker and I took the door and I sat it down in front of him, and I pointed out the prints to him on the door, and I said, "Those are your prints," and he said, "No, they are not my prints at all." I set the door down, and at this time Sgt. Wiseman showed the defendant the picture—I know it is in evidence but I don't know what number it is, it is a picture of the kitchen showing the garbage disposal door.

Q. I presume it was a smaller size than the one introduced in evidence here.

A. It is a small picture; not the enlarged picture, but a small one.

Q. A smaller size of People's Exhibit No. 18, is that correct, this one here?

A. That is correct. This picture here, Sgt. Wiseman showed this picture to the defendant and pointed out this garbage disposal door here, and he said, "That is how you got into that apartment, you went through the garbage disposal door, that is how you got into the apartment to burglarize it." He said, "Well, that is not so, I was not in the apartment." The defendant said, "Well, when was this murder, anyway?" "Well," I said, "you should know that better than anybody else," I said, "you was present." He said, "I was not," that was his answer. Sgt. Wiseman then showed him the pictures—I don't know the numbers of them—

Q. When you refer to them, I take it you mean a smaller size?

A. A smaller size but this is the enlargement here. He showed him this picture here.

Q. That is Exhibit No. 33?

A. He laid the picture down in front of the defendant, that is this picture here, and he says, "Have you ever seen this party before?" and he wouldn't look at it, he pushed the picture away and it fell on the floor. Sgt. Wiseman then threw the rest of these pictures all in a bunch down in front of the defendant and told the defendant to go ahead and

look at it. The defendant refused to look at them and I said, [fol. 538] "What's the matter, can't you stand it?" He said, "I don't like to look at dead people." That was his answer to it. I believe that is about all the conversation we had at that time.

Q. You started to say he asked something about what date it happened on. Did you tell him when it happened?

A. Yes, Sgt. Wiseman said, after I had said to him, "Well, you should know," Sgt. Wiseman then spoke up and he said, "Well, as far as we can figure it out, it happened on July 24th some time in the afternoon." The defendant says, "Well, what day was that?" Sgt. Wiseman said, "That is on a Monday." "Well," he said, "I don't have to worry about Monday," he said, "because I will have my witnesses," he says, "and I can account for my Mondays," he says, "all summer, I know where I was, and when the times comes I will have my witnesses there to prove it."

Q. I did not hear the last part.

A. He says, "When the times comes I will have my witnesses there to prove it, and I will be defended by one of the best attorneys in Los Angeles."

Q. Now, with reference to the defendant, when was the next time you had some conversation with him as far as pertains to the facts in this case?

A. The next conversation that we had with the defendant was on the morning of the 28th of August.

Q. Let me ask you this before we get into that one: Did you yourself see him on the date of the 27th, the Sunday? [fol. 539] A: I did.

Q. At the station?

A. At the Central police station.

Q. Had you previously been to a room on South St. Andrews?

A. I had.

Q. What address was that?

A. 2460 South St. Andrews, on the third floor.

Q. And in that room, among other things, did you find a fountain pen?

A. I did.

Q. And when you saw the defendant on the morning of the 27th did you have the fountain pen with you?

A. I did.

Q. And did you exhibit that to the defendant?

A. I exhibited that pen in addition to another pen that was found in his room, a green colored pen.

Q. And was there anything said by him at that time in words or substance concerning where he lived?

A. Yes.

Q. All right, what was said as to where he lived?

A. When I first went in to the defendant I said, "Dewey, are you willing to tell me where you live now, where your room is at?" and at that time I had the pen in my hand like this, both pens in my hand like this. However, I never said anything about pens, I just held it in my hand. The defend- [fol. 540] ant looked down at the pens and he said, "Well, it looks like you already know where I live," and I said, "Yes, that is true, Dewey," I said, "we do know where you live; you live at 2460 South St. Andrews," and there was some other conversation but it does not pertain to this case. [fol. 541] Q. On this day before that you had gone to this room?

A. Yes, on a Saturday before.

Q. Were you taken there by either Mr. or Mrs. Reyes?

A. Mrs. Reyes.

Q. That is the landlady there, is that correct?

A. That is the landlady of the apartment.

Q. When you were taken there did she point out a room to you as being the room of the defendant?

A. Yes, she took us to the room and let us in.

Mr. Roll: I have here, if the court please, an envelope which contains a portion of three stockings which I ask be marked People's Exhibit next in order for identification.

The Court: 35.

By Mr. Roll:

Q. Directing your attention to the People's Exhibit 35 for identification, Mr. Brennan, I will ask you to examine that and state when and where you first saw those stockings?

A. It was on Saturday evening which would be August 26th, I believe. Sergt. Wiseman found this stocking on top of the dresser in the room at 2460 South St. Andrews. I saw him when he picked it up and he handed it to me to look at it.

Q. I am not very good on colors.

A. It is a lighter color.

Q. All right, the lighter color. Go ahead.

A. These are the two I found in the dresser drawer, in [fol. 542] the bottom dresser drawer with some other things, some stockings and socks that were in there.

Q. Now, with reference to the condition of these stockings, I notice each of the stockings has at the end which is away from what we might call the top a knot or knots tied in the end of each stocking. Was that the way they were found up there in the room of the defendant on the day of the 26th of August, 1944?

A. Yes, that is exactly the way they were when we found them.

Mr. Roll: Now, I will now offer in evidence these stockings, if the court please, Exhibit No. 35.

The Court: 35?

Mr. Safier: I object to them as incompetent, irrelevant and immaterial, having no bearing on the issues in this case.

The Court: Marked 35 in evidence.

By Mr. Roll:

Q. Now, Mr. Brennan, directing your attention, I believe you stated the 28th is when you had the next conversation?

A. Yes, on the 28th of August.

Q. All right, go ahead.

A. At that time we picked the defendant up at the Central Police Station—no, we got the defendant at the County Jail upstairs that morning on the 28th. We took the defendant to Division 4 for preliminary hearing.

Q. Now, I believe the preliminary hearing—that was the [fol. 543] date of the arraignment, wasn't it?

A. Yes, that is right, it was on the 28th, that would be the date of the arraignment, correction, that is right on the 28th, the date of the arraignment which was down on the 28th.

Q. The preliminary hearing, I believe, was held on the 1st of September?

A. On the 1st of September.

Q. Did you have some conversation with him on the date of the 28th?

A. We got him that morning, picked him up at the Central Police Station and brought him to Division 4. After he was arraigned in Division 4 on the way back to the elevators to take him upstairs to book him into the County, the defend-

and stated,—I said, "Well," I said, "Dewey, you have to go stand trial for this, anyway" and he said, "Well, that is all right." He said, "I will have my attorney and all my alibi witnesses there when the time comes." That is about the substance of the conversation.

Mr. Roll: Will you read that answer, Mr. Reporter?

(Answer read.)

By Mr. Roll:

Q. Have you had any later conversation with the defendant pertaining to the facts in this case other than that?

A. We had another conversation with him—we had the conversation with the defendant, I called at the County Jail [fol. 544] on the 31st of August. At that time we passed greetings in the County Jail, and the defendant, before we had a chance to ask him any questions, I asked him about something not pertaining to this case, and then the defendant spoke up and he said, "Well, you fellows are just wasting your time talking to me." He said, "You have your witnesses up there at the time and I will have my witnesses and my attorney and," he said, "you are just wasting your time talking to me so," he said, "you might just as well leave" so we left.

Mr. Roll: Cross examine.

Cross-examination.

By Mr. Safier:

Q. Mr. Brennan, you testified that you had some conversation at the Wilshire Police Station at which time you had these pictures present. When was that?

A. That was on the morning of the 24th—I should say, the afternoon of the 24th. I don't know the exact time but it was around 2 or 3—between 2 and 3 in the afternoon.

Q. The 24th of what? August?

A. The 24th of August.

Q. Who all were present at the time of that conversation?

A. Sergt. Wiseman, the defendant, myself, and there was another officer or two; I don't recall their names; it seems as I recall now it was Sergt. Powers and Sergt. Swan. [fol. 545] I wouldn't swear as to those officers. There was

a couple of other officers standing there present; it was in the squad room.

Q. Was this conversation in a little, small room?

A. No, it was in a big room, practically as big as this courtroom.

Q. How far away from the defendant were you when you talked with him?

A. Just across the table.

Q. Did you show him the pictures at that time?

A. Sergt. Wiseman laid the pictures down at that time and told him to look at them.

[fol. 546] Q. He told you he didn't like to look at dead people?

A. Yes.

Q. You had this garbage disposal door at that time too?

A. That is right.

Q. You showed him that at the time?

A. I did.

Q. As a matter of fact, at that time was there not a whole palm impression somewhere on that door?

A. I don't recall of any palm impression. There was a lot of fingerprint powder on it. I didn't pay any particular attention to a palm print or anything like that.

Q. Do you remember anything about an entire hand impression being on the door?

A. No, I don't recall seeing that on there.

Q. Now, what did you say to him when you showed him the door?

A. I pointed out the prints, and I said, "You see those prints on the door?" and he said, "Yes." I said, "Those are your prints." I said, "The only way they could get there," I said, "is you put them there."

Q. Did he pick the door up and look at the prints, at that time?

A. I did not get the question.

Q. I say, did the defendant pick the door up and look at it at that time?

A. No, he did not.

[fol. 547] Q. Did he look at the door?

A. He looked at it.

Q. How far away from the defendant was the door at that time?

A. About 2 feet.

Q. About 2 feet?

A. Yes.

Q. How long was the door within 2 feet of the defendant?

A. I don't know; maybe a minute or two.

Q. As a matter of fact, he picked it up and looked at it, didn't he?

A. No, I don't recall. He looked at it; I don't recall him touching it, no.

Q. Are you able to testify that he did not touch the door?

A. Yes, I will testify that he did not touch the door.

Q. I see. Did you have your hands on it all the time?

A. I did.

Q. You did not let it go out of your hands?

A. I didn't allow him to touch the door at all.

Q. I say, was the door out of your hands at any time during that conversation?

A. I set the door up on the table like this and had my hand on the top of it, and just pointed out the prints on the door to him.

Q. You are certain the defendant did not pick the door [fol. 548] up and look at it?

A. I am positive.

Q. Was there anything between the defendant and the door at that time?

A. Nothing at all.

Q. Several other officers were walking around there, weren't they?

A. There was.

Q. Or standing around the door?

A. No, they weren't standing around the door, but they were within hearing distance; you might say, spectators.

Q. Is that the first time you showed the defendant the door?

A. It was.

Q. Did you show it to him on any other occasion?

A. No, I don't recall showing it to him.

Q. You had the door at the preliminary hearing in this case?

A. It was, yes.

Q. It was?

A. Yes.

Q. You had it in the courtroom downstairs?

A. Yes.

Q. The defendant was present at that time, wasn't he?

A. Yes.

Q. Now, at the time of the preliminary examination in [fol. 549] this case how far was the door from the defendant?

A. Oh, I don't know; I couldn't say how far it was. It was on the table. I wouldn't even estimate how close it was to him.

Q. The defendant might have touched it at that time, might he not?

A. No, he did not.

Q. Was it out of your possession at that time?

A. No.

Q. You testified at the preliminary hearing, did you not?

A. I did.

Q. Did you have the door with you on the witness stand?

A. No, but it was in the possession of my partner when I didn't have it.

Q. You didn't—

A. It was not out of my sight, no.

Q. But the defendant was sitting at the same table with his counsel, wasn't he?

A. Yes, he was.

Q. The door was on the counsel table?

A. No, it wasn't.

Q. Where was it?

A. Leaning against the end of the counsel table.

Q. Leaning against the end of the table?

A. As I remember, it was leaning against the end of the counsel table.

[fol. 550] Q. At the same table at which the defendant and his counsel were sitting?

A. Yes, but the other end.

Q. Now, you have talked to a number of the neighbors at this apartment house at 744 South Catalina Street—strike that. You have talked to the tenants or a great number of them that live in that building at 744 South Catalina Street?

A. Yes, I think I talked to pretty near all of them.

Q. They are all white people, aren't they?

A. Yes, they are.

Q. There wasn't any of them that told you that they saw this defendant or any other colored man—

Mr. Roll: I object to that as being hearsay.
The Court: Sustained.

By Mr. Safier:

Q. You did get a report, did you not, that a strange woman had been seen around the building?

Mr. Roll: I object to that on the ground it is hearsay.
The Court: Sustained on that ground. If there is any such report, the report itself would have to be brought in.

By Mr. Safier:

Q. Well, in your investigation, Mr. Brennan, did you discover any evidence that a strange woman had been seen around the building?

Mr. Roll: Just a moment.

The Court: Just a minute. Sustained on the ground it calls for a conclusion and also calls for hearsay. In other [fol. 551] words, if anybody saw a strange woman around there, the person to testify to it is the person who saw her.

Mr. Safier: The difficulty is, your Honor, we do not know which of the tenants it was that made the report.

The Court: We do not know there was anybody. The jury is instructed at this time not to draw any inference from the statement of counsel that there was such a person.

Mr. Roll: I assign that as misconduct.

The Court: The very fact you do not know of any person who made the statement indicates there was not any such statement.

By Mr. Safier:

Q. What time did you get to the apartment that evening?

A. About 8:15 p. m.

Q. Was Mr. Wiseman with you?

A. I met Sgt. Wiseman as I entered the lobby, and we went up to the apartment together.

Q. You and Mr. Wiseman entered the apartment together?

A. That is right.

Q. You and Mr. Wiseman were the first to arrive, or were some police officers present when you got there?

A. There were some police officers present when we arrived.

Q. Who was it that was present when you arrived?

A. As I recall, Sgt. McGarry and Sgt. Brown, of the Central Homicide Squad, was there, Sgt. Long, Sgt. [fol. 552] Woodhall, of the Wilshire Detective Bureau, were there; that is the only officers that was there, as I recall.

Q. Now, the door to the garbage compartment, was that unhinged from the compartment itself—

A. Yes, it was.

Q. —when you first saw it?

A. Yes, it was.

Q. Mr. Brennan, you testified in your search of the apartment you found some jewelry; what did you find?

A. There was in the dressing room off of the bathroom—there were several boxes of custom jewelry; just ordinary jewelry that you might buy in any dime store or department store; there was necklaces, pins, brooches, and there was quite a quantity of—there was eight or ten strings of beads, various kinds, pearls, glass beads, red beads, green beads and blue.

Q. You observed that Mrs. Blauvelt had a watch on at the time you found her?

A. I did.

Q. Did she have any ring on?

A. She had one ring on.

Q. That was a gold band, wasn't it?

A. That is right.

Q. What day was it that you found those stockings, Mr. Brennan?

A. On Saturday, August 26, 1944.

[fol. 553] Q. You had been in the defendant's room prior to that date, had you not?

A. I had not.

Q. Did you ever show the stockings to the defendant?

A. I don't believe so, no.

Q. You never showed him that?

A. No.

Q. Did you ever show him the lamp cord?

A. No.

Q. You showed him the pictures and you showed him the door; did you show him anything else?

A. Well, —

Mr. Roll: Do you mean in so far as it pertains to this case?

By Mr. Safier:

Q. That is right, in so far as it pertains to this case.

A. I believe that was all.

Q. The defendant at all times denied to you that he had committed this murder, did he not?

A. That is right.

Q. Do you know who unhinged the garbage disposal door from the garbage compartment?

Mr. Roll: Just a moment.

A. I don't know.

Mr. Safier: I will reframe that.

Q. Do you know whether any of the police officers [fol. 554] involved in this case unhinged the door from the garbage disposal compartment?

A. The only way I could answer that question would be that when I arrived Sgt. Long informed me that nothing had been disturbed in the apartment, that he had allowed no one to enter the apartment at all.

Mr. Shafier: I think that is all.

Redirect examination.

By Mr. Roll:

Q. One or two questions, Mr. Brennan, with reference to the place there where the garbage disposal door fit. Did you yourself after the photographer got through go out into the kitchen and look at the siding there where the hinges had been?

A. Yes; I did.

Q. On which side was it actually hinged?

A. The door—I took the door and sat it against here, and the hinges were on this side; that would be the right side of the door; the screws that fit in the holes on the side or wall—on the side of this board, were still in the hinge, and some of the loose wood that appeared to have come out of the holes was still adhered to the screws that was still in the hinge of the door. The hinges were on the outside of the door.

Q. This is the portion of the door on this side where the door was hinged; is that correct?

[fol. 555] A. That is correct.

Mr. Roll: He has indicated here is the casing the door was hinged onto, on this side over here (exhibiting photograph to the jury).

Q. Next to the wall, is that correct?

A. Next to the wall.

Q. Now, with reference to the time which you have testified to, that you had a conversation with the defendant concerning the prints on the door, I will ask if at that time the prints which have been testified to here were at that time covered with Scotch tape?

A. They were.

Q. And there at the time you picked the door up—you testified you picked the door up, I understand, after the fingerprint man got through?

A. Yes.

Q. At that time was the Scotch tape on the prints?

A. It was.

[fol. 556] Mr. Safier: Just a moment. I move to strike out the last two answers, if the court please, as being a conclusion and opinion of the witness.

The Court: It wouldn't be a conclusion. He certainly could see the pieces of Scotch tape.

Mr. Safier: He could see the Scotch tape, but he doesn't know whether it covered the same fingerprints we are talking about here.

The Court: I think he could tell that. I do not think there is any confusion about it. I think he could see with his own eyes. It would be direct testimony on his part and not a conclusion.

By Mr. Roll:

Q. In so far as this door is concerned, Mr. Brennan, the door was not introduced into evidence at the preliminary hearing?

A. I don't believe so. I wouldn't say for sure. I don't remember. But it didn't seem to me like it was.

Q. With reference to the piece of Scotch tape opposite the arrow "A" and the piece of Scotch tape opposite the arrow "B" and the piece of Scotch tape opposite the arrow "C", on the reverse side of the door, the metal side, were those pieces of Scotch tape on there when you picked the door up there in the apartment on the night of the 25th?

A. Yes. This piece of Scotch tape here (indicating), I saw Officer Ferguson take a picture and put that tape there myself.

[fol. 557] Q. You refer to exhibit C?

A. "C." These other tapes he put on there when I was not present? But when I picked up the door these two pieces and the other one were still on the door.

Q. They were on there at all times since then?

A. To my knowledge, and the door has not been out of our possession.

Mr. Roll: Cross examine.

Recross examination.

By Mr. Safier:

Q. Officer Brennan, at the time the door was removed from the apartment, how many pieces of Scotch tape were on it?

A. Three, to my knowledge; there were three different places with Scotch tape.

Q. Three?

A. Yes, sir.

Q. How many pieces of Scotch tape were on there at the time you showed the door to the defendant over at the police station?

A. Three.

Q. I understand your testimony is that you had the door at the preliminary hearing and it was not introduced in evidence?

A. I am not sure. I would not want to swear either way to that; I don't know.

[fol. 558] Q. But you do know that you had it there?

A. We had it but I don't remember whether it was introduced into evidence or not.

Q. Did you have stockings there at that time, too?

A. I believe we did.

Q. You are not certain?

A. I am not certain, no. I do not think we did have the stockings there—no, I am quite sure we did not.

Q. You are sure now that you did not have the stockings?

A. I don't think we did, no.

Q. And you never at any time told the defendant about the stockings?

A. No, I don't believe we ever mentioned the stockings to the defendant.

Mr. Safier: I think that is all.

Mr. Roll: That is all. Take the stand, please.

[fol. 559] G. H. WISEMAN, called as a witness on behalf of the People, was duly sworn and testified as follows:

The Clerk: What is the name, please?

A. G. H. Wiseman.

Direct examination.

By Mr. Roll:

Q. With reference, Mr. Wiseman, to the door which has been marked here as People's Exhibit 6 in evidence, were you present at the time there was some discussion with the defendant concerning the door over in the Wilshire Station?

A. I was.

Q. And did the defendant touch that door at any time?

A. No, he did not.

Q. With reference to the door itself either on the 24th or 25th of August, whatever day it was there, was the Scotch tape already on the door?

A. Yes, it was.

Q. Now, at the preliminary hearing was the door introduced into evidence or not?

A. It was not introduced into evidence.

Q. Was it taken back to Wilshire Station?

A. That is right.

Q. And kept in a locker?

A. That is right.

Q. And brought down here for the trial in Superior Court?

[fol. 560] A. That is correct.

Mr. Roll: Cross examine.

Cross-examination.

By Mr. Safier:

Q. At the incident in the Wilshire Police Station you had the door present and the defendant was present and who else was present?

A. Sergt. Brennan was holding the door and I was standing alongside of the defendant and the defendant was seated at a table and there were two other officers present in the room, and I believe that was Sergts. Powers and Swan.

Q. How far away from the defendant was the door?

A. I would say about 2 feet.

Q. For how long a period of time?

A. Oh, just a few minutes. I would say a couple of minutes.

Q. You were not holding onto the door all that time, then, were you?

A. No; Sergt. Brennan had hold of it.

Q. You did not have hold of it?

A. No, sir.

Q. You were by the defendant?

A. That is right.

Q. The defendant might have touched the door at that time, might he not?

A. No, I am quite sure he did not.

[fol. 561] Q. You are quite sure he did not? And you had the door at the preliminary hearing?

A. We did.

Q. And you had it at the same counsel table at which the defendant and his counsel were seated, didn't you?

A. We had it up at the other end from where the defendant was seated.

Q. Well, the room where you held this preliminary examination, so far as the counsel table, the bench and everything is very similar to this one, is it not?

A. That is right.

Q. When you said you had it at the other end where the defendant was seated you mean you had it at the end of the counsel table where Mr. Roll is seated?

A. That is correct.

Q. Did you have it on the table?

A. As I remember it was leaning up against the end of the table on the floor.

Q. Standing on the floor?

A. That is right.

Q. Did the defendant come by that way when he came in?

A. No, I don't believe so.

[fol. 562] Q. Which way did the defendant come into the courtroom?

A. Well, he passed that way from the prisoners' box.

Q. He did pass that way?

A. He passed that way, yes, sir.

Q. Immediately next to the end of the table the prosecuting attorney was seated, wasn't he?

A. That is right.

Q. Were you seated next to the prosecuting attorney?

A. I was.

Q. Was some other police officer seated there, too?

A. Sgt. Brennan was sitting in a chair directly in back of me.

Q. Directly in back of you. That door was in your possession during the entire preliminary examination?

A. As well as I can recall.

Q. The defendant also walked past there when he left, didn't he?

A. I believe he returned to the prisoners' box after the preliminary hearing was completed.

Q. I see, going around where the door was?

A. Yes.

Mr. Safier: That is all.

Redirect examination.

By Mr. Roll:

Q. The defendant was represented at the preliminary hearing by Mr. Ward Sullivan out of Mr. Giesler's office, wasn't he?

[fol. 563] A. That is correct.

Mr. Roll: No further questions.

Mr. Safier: That is all.

Mr. Roll: There are two exhibits here, if the court please, which Mr. Rogers brought into court, which are photographs of the drawings there on the board which I would at this time—I will ask to have marked People's exhibit next in order I believe it will be 36.

The Court: I wonder if it would not keep our record a little better if we substituted them for the blackboard drawing, substituted that for the blackboard drawing?

Mr. Roll: Yes, your Honor, that will be perfectly satisfactory.

The Court: Don't you think it would be better?

Mr. Safier: I think so.

The Court: Because the blackboard drawing is likely to get smudged and we cannot carry it up into the jury room and make it a portion of the record. I will have to catch that and see what the blackboard drawing was.

Mr. Roll: I do not think either one was marked, your Honor.

The Court: Well, this photograph, then, ten figures on the blackboard drawing, using the large demonstration of the fingerprints which was on a separate blackboard and — which a part of the fingerprint is reproduced in chalk on the blackboard and has numbers running from 1 to 10, mark [fol. 564] that 36 in evidence. Then the photograph on the other blackboard which has been used by several witnesses, both Mr. Larbaig and Mr. Rogers, will be marked 37 in evidence.

The Clerk: What was 35?

The Court: The stockings were 35. We have a few other exhibits, while we are talking about exhibits, that are not in evidence. I will catch those in a minute for you. 31 and 32, which are photographic enlargements made by Mr. Rogers.

Mr. Roll: I will now offer those into evidence.

The Court: They will be marked in evidence. 28, 29 and 30—28 and 29 were enlargements which Mr. Larbaig produced.

Mr. Roll: I will offer those in evidence.

The Court: 30 was a fingerprint card which Mr. Rogers wrote. All marked in evidence.

Mr. Roll: That is the People's case, your Honor.

The Court: I think we will take our recess a little early before we go into the question of defense. The jury will keep in mind not to talk about the case, or form or express any opinion. Take our recess. That puts all exhibits thus far marked with any numbers at all, all are in evidence.

(The jurors left the courtroom and the following proceedings were had in their absence:)

Mr. ~~Safer~~: I want to make a motion at the bench.

[fol. 565]

MOTION TO STRIKE

(The following proceedings were had at the bench:)

Mr. Safer: I make a motion to strike from the evidence the handkerchief and the two napkins that were found in the search of the apartment on the grounds they are incompetent, irrelevant, immaterial, and have not been connected up in any way.

The Court: Well, with the exception of one handkerchief, they were all directly connected with the scene of the alleged offense. As to those, the motion will be denied. Now, there was an orange—a handkerchief which you referred to in Mr. Pinker's testimony, which was on the large overstuffed chair by the purse, No. 14, and that is found directly on the scene of the crime. Exhibit 15, the orange-colored handkerchief, was found in the dresser and bore the same name, "Carrie," as the handkerchief which was found on the chair. As to that the motion is denied. I think that is admissible as tending to show possession and ownership in the same individual of two separate handkerchiefs, in other words, it has some tendency—it may not be a great deal, but it has some tendency to show the handkerchief found by the purse was owned by the same person who owned the handkerchief found in Mrs. Blauvelt's dresser drawer. The napkin is 16, and that was found right on the scene of the offense.

MOTION FOR ADVISED VERDICT

Mr. Safier. The next motion will be made for an advised verdict on the ground the evidence is not sufficient to go [fol. 566] to the jury.

The Court: That motion will be denied on two grounds: One is, I think the evidence is sufficient to go to the jury, and the other is I never instruct the jury until both sides rest.

(Short recess.)

The Court: The record will show the jury, counsel and the defendant present. You may proceed.

Mr. Safier: May we have just one moment, your Honor?

The Court: Yes.

(Conference between defendant and his counsel.)

Mr. Safier: The defendant rests.

The Court: You may proceed with the argument.

Mr. Safier: May we approach the bench first, your Honor?

The Court: Yes.

(The following proceedings were had out of the hearing of the jury:)

RENEWAL OF MOTION FOR ADVISED VERDICT

Mr. Safier: The defendant at this time renews his motion for an advised or directed verdict on the ground of the insufficiency of the evidence.

The Court: Motion denied.

Mr. Safier: Very well.

(The following proceedings were had in open court:)

The Court: You may proceed with the argument.

(Argument.)

[fol. 567] (After argument to the jury by respective counsel, and the instruction of the court having been read, the jury at 3:30 p. m., November 24, 1944, retired to deliberate upon its verdict.)

Wednesday, November 22, 1944; 2:35 o'clock P. M.

The Court: The record in the case of People vs. Admiral Dewey Adamson, No. 98734, will show the defendant present, counsel present and the jury present. Have you agreed upon a verdict, Mrs. Dickie?

The Forewoman: We have, your Honor.

The Court: You may hand it to the bailiff.

(Verdicts handed to the court by the bailiff.)

The Court: The clerk may read the verdicts returned by the jury.

(Verdicts of jury read by the clerk.)

Mr. Safier: I ask the jury be polled.

The Court: The clerk may poll the jury. Possibly this next procedure may be somewhat new to some of the jurors. You have already been asked whether this is your verdict, your individual verdicts, and the verdict of the jury. There is a procedure known as polling the jury. The clerk will call each of your names and ask if this is your verdict, and you will answer if it is or is not your verdict.

[fol. 568] (Jury polled by the clerk.)

The Court: You may record the verdicts.

The Clerk: They do not have to be recorded.

The Court: They still have to be recorded. This will conclude your services in this particular case, ladies and gentlemen.

(Jury thereupon retires from courtroom.)

Mr. Safier: At this time we give notice of a motion for a new trial.

The Court: What was that other date?

The Clerk: Friday, the 24th.

The Court: Do you want to put this on Friday with the other case, for the same time, and hear the two of them together?

Mr. Safier: It would suit me better to have it Monday.

The Court: Set this matter down for Monday, the 27th, for judgment and sentence.

Mr. Safier: And have the other one go to Monday too.

The Court: The motion for a new trial?

Mr. Safier: Both at the same time.

The Court: Yes. At the request of the defendant, this consolidated case, 98734 and 98859, is also continued, on motion of the defendant, until Monday, November 27th, at 9 o'clock a. m.

Mr. Roll: With reference to the other case, is it within the statutory time?

[fol. 569] The Court: When it is at the request of the defendant the statute does not operate.

[fol. 570] Monday, November 27, 1944; 9:00 o'clock A. M.

JUDGMENT AND SENTENCE

The Court: Admira! Dewey Adamson, you were heretofore arraigned under Information 98734, charging you with the crime of murder in count one and burglary in count two. The information also alleged that you *had* previously convicted of the crime of burglary in February, 1920, and the crime of first degree robbery in June, 1927, both convictions having been suffered in the State of Missouri, and both having punishment inflicted by the service of terms of imprisonment in the State Prison of that State. These prior convictions were admitted by you and were not submitted to the jury. The issues of fact being submitted to the jury on counts one and two, the jury returned a

verdict finding you guilty of the crime of burglary of the first degree, as charged in count two, and found you guilty of murder in the first degree under count two, without recommendation, the verdict carrying with it the death penalty. This is the time set for judgment and sentence, and any further proceedings on the motion for a new trial made on November 24, 1944.

Mr. Safier: On the motion for a new trial we urge the evidence is insufficient as to the murder count and as to the burglary count; that the only evidence in the case tending to connect this defendant at all was the fingerprint evidence, and that evidence did not directly connect him [fol. 571] with the crime of murder. The record is silent as to how long prior to this crime those fingerprints might have been placed there, and it is not a circumstance that directly connects this defendant with the crime of murder. I submit it without further argument.

The Court: Well, the motion for a new trial is denied. The record will show that the court is fully appreciative of the entire situation here and the seriousness to the defendant. The court has absolutely no doubt of the guilt of the defendant of both of these offenses. The record might also show this question has been already approved in our courts, *People v. Ramirez*, 113 Appellate, 210, the court specifically holding that the finding of the fingerprints of a defendant at the scene of a burglary was sufficient in law to connect the defendant with the offense and sustained the conviction. Is there any further legal cause why sentence should not now be pronounced?

Mr. Safier: None, your Honor.

The Court: Let the record show that this defendant is charged by information filed on September 14, 1944, with the crime of murder, in count one, and burglary in count two, and three other counts of burglary which were thereafter severed and joined with another information and tried separately. The information alleged two prior felony convictions, to-wit, the crime of burglary in the State of Missouri, for which, in February, 1920, the defendant was [fol. 572] sentenced to serve a term of imprisonment in the State Prison, and the crime of first degree robbery in the State of Missouri, for which, on or about the 30th day of June, 1927, the defendant was sentenced to serve a term of imprisonment in the State Prison. Originally the defendant denied these prior convictions, but prior to

trial admitted the prior convictions, and the information was submitted to the jury merely upon the pleas of not guilty of the defendant to the charges of murder in count one and burglary in count two.

The cause came on for trial on the 15th of November, 1944, and after hearing the evidence and the instructions of the court, the jury retired and returned verdicts on the 22nd of November, 1944, finding the defendant guilty under count one of the information of the crime of murder in the first degree, and making no recommendation in their verdict as to the matter of penalty. The jury also found the defendant guilty of burglary of the second degree under count two of the information. It further appeared, at the request of the defendant, further proceedings for passing on judgment and sentence were continued to and set for the 24th of November, 1944, at the hour of 9 a. m., at which time a motion for a new trial was made, and at the request of the defendant was continued for further proceedings to this, the 27th day of November, 1944. At that time the motion for a new trial was heard and argued and by the [fol. 573] court denied.

It is now the judgment and sentence of this court, for the crime of murder of the first degree, of which you, the said Admiral Dewey Adamson, have been convicted under count one of Information 98734, the verdict carrying with it the extreme penalty of the law, that you, the said Admiral Dewey Adamson, be delivered by the Sheriff of Los Angeles County to the Warden of the State Prison at San Quentin, and to be by him executed and put to death by the administration of lethal gas in the manner provided by the laws of the State of California; and the Sheriff is directed to deliver the said Admiral Dewey Adamson to the Warden of the State Prison at San Quentin within ten days from this date, to be held by said Warden pending the decision of this case on appeal; the Sheriff is further commanded to take the said Admiral Dewey Adamson to the State Prison at San Quentin and deliver him into the custody of the Warden of the State Prison, and the Warden is commanded to hold the said Admiral Dewey Adamson pending the decision of this case on appeal, and upon the judgment becoming final to carry into effect the said judgment of this court at a time hereafter to be fixed by the order of this court within said State Prison at which time and place said Warden shall then and there put to death the said

Admiral Dewey Adamson by the administration of lethal gas.

It is the further judgment and sentence of this court, [fol. 574] for the crime of burglary of the first degree, of which the defendant has been found guilty under count two of this information, after said prior convictions, the said Admiral Dewey Adamson be imprisoned in the State Prison of the State of California for the term prescribed by law. The sentences just imposed to run concurrently with one another, and to run concurrently with the sentences imposed under Information 98859 and 98734, which were consolidated, and for which the defendant has just been previously sentenced.

Mr. Safer: I ask for a stay of proceedings now, so the defendant may be here for a while so he will be available for conference.

The Court: Not under this statute. The statute provides the defendant must be taken to the State Prison within ten days.

[fol. 575] Reporters' certificate to foregoing transcript omitted in printing.

[fol. 576] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

JUDGE'S CERTIFICATE

I, Charles W. Fricke, Judge of the Superior Court of the State of California, in and for the County of Los Angeles, and being the judge who presided at the trial of the above entitled criminal cause, do hereby certify that the objections made to the transcript herein have been heard and determined and the same is now corrected in accordance with such determination, within the time allowed by law; and the same is now, therefore, approved by me this 9th day of Jan., 1945.

Chas. W. Fricke, Trial Judge.

[fols. 577-578] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

JUDGE'S CERTIFICATE

I, Charles W. Fricke, Judge of the Superior Court of the State of California, in and for the County of Los Angeles, and being the judge who presided at the trial of the above entitled criminal cause, do hereby certify that no objection has been made to the within transcript by either the defendant or his attorney, or the District Attorney, within the time allowed by law; and the same is now, therefore, approved by me this 9 day of Jan. 1945.

Chas. W. Fricke, Trial Judge.

[fol. 579.] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

Department 43. Hon. Charles W. Fricke, Judge

No. 98734

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

ADMIRAL DEWEY ADAMSON, Defendant

Reporter's Supplemental Transcript

APPEARANCES:

For the People: S. Ernest Roll, Esq., Deputy District Attorney;

For the Defendant: Milton B. Safier, Esq.

[fol. 580] Monday, November 20, 1944; 9:30 o'clock A. M.

Mr. Roll: May it please your Honor, counsel for the defendant and members of the jury: I will say at the outset of this case, as in any case of importance, that in approaching the case, discussing with the jurors, as I comment upon the evidence and I quote as being the testimony in the case something which, according to the record in the case, does not appear to be in the testimony; I ask you to disregard

my statement as being the evidence and take only the record of the witness' testimony, and chalk it up as an inadvertence on my part. And if, during the discussion of questions of law which will be involved in the case, you find I make any statement as to what I believe his Honor will instruct you concerning the law, and it comes time for the instructions, you hear them, and the court instructs you otherwise, I ask you to disregard what I have told you. I believe the court will give you, and follow implicitly the court's instructions.

You learned at the outset of this case, while you were being questioned as jurors,—you were asked this question either by the court or by one counsel or the other, that the only evidence that you would consider is that which you would hear here in court, and the only law you would consider is that given you by the court. And I ask you to bear that in mind as we approach this case.

I do not stand here, members of the jury, in the capacity [fol. 581] of representing any private client. I stand here in the capacity of a sworn officer of the law, a part of the District Attorney's office, for the purpose of presenting the facts available to you, intending to see that a proper verdict is arrived at. My obligation is to the People of the State of California and to the defendant in this case. I do not owe any obligation to a private client.

Let us approach this case first with reference to the nature of the charges involved. You heard at the outset that this defendant is charged with two offenses: one, the offense of murder, and, second, the offense of burglary. It is alleged in the information which has been filed against the defendant that these two offenses which occurred on the date of the 24th of July, 1944, as far as the count of burglary is concerned, it reads that the apartment of one Stella Blauvelt, 744 South Catalina Street, City of Los Angeles, County of Los Angeles, State of California,—now, the court will instruct you, I believe,—taking the offense of burglary,—that every person who enters a room, apartment, house, dwelling of another with the felonious intent of committing either grand or petty theft, is guilty of the offense of burglary. The court will further tell you, in order to convict a person of this offense, there must be shown specific intent. In other words, a person must have that intent at the time entry was made, and the court will also, I believe, instruct [fol. 582] you that the intention with which an act is done

by a particular individual is manifest by the circumstances surrounding the commission of the offense in the sound mind and discretion of the accused. Those, generally, will be the instructions which I believe the court will give you concerning the offense of burglary.

Now, in so far as the offense of murder is concerned, the court will give you a definition of what goes to make up and constitute the offense of murder. Murder, I believe the court will tell you, is the unlawful killing of a human being with malice aforethought, the unlawful killing of a human being with malice aforethought. The Legislature has seen fit to divide murder into degrees, divided it into first and second degree. And in so far as making the division of murder is concerned into those two degrees, the law says that anyone who commits a murder during the perpetration of certain offenses, one of them being burglary, is guilty of the offense of murder of the first degree.

Now, with reference to the interpretation of those instructions, in view of the testimony that has been introduced into this case, eliminating entirely from—at this time from the question as to the identity of the perpetrator, I think that under the testimony in this case the evidence shows that the only reasonable conclusion, the only conclusion which has been proven beyond any reasonable doubt, is that the murder was perpetrated in the commission of a burglary. That being so, it would be a murder [fol. 583] in the first degree.

We find from the testimony—I will go into it in detail a little later—of Dr. Webb as to the cause of death, we know that Mrs. Blauvelt died by the primary reason of strangulation. We know from the nature of the testimony, what we find there, it certainly was not self-inflicted; it was done by some other person. We know in addition to that, in talking about the degree of the murder, that Mrs. Blauvelt did have in her possession and wore—we have gone as close as 11:30 on the morning of the 24th, by Mrs. Turner, the lady who was employed at Bullock's, placing the diamond rings on her finger. We know those diamonds were missing from her apartment and from her person when her body was found. In addition to that we know, unquestionably, that entry was made into this apartment by means of going into this servitor or garbage disposal unit. Now, that evidence of the diamonds being missing and the evidence of the manner in which the entry was made goes to

this question of the intent of the person that made the entry; that is evidence of their intent.

For example, if you members of the jury, some of you would be so unfortunate this evening as to go home and find that a screen had been cut, that a window had been forced and you got into your bedroom and you found that numerous articles were gone from your own personal belongings, you would know there had been a burglar in that [fol. 584] house. Just the same in this case, we know that the person that made the entry through the servidor, the rings being gone, and the manner of entrance, that person went in there for one purpose and that purpose was to commit burglary. So I say, leaving out the question of the identity of the perpetrator, that the only conclusion we can come to is that the burglary was one which occurred—the murder was committed during the burglary, and it was first degree burglary.

Now, let us look at the testimony in this case. Up to this noon we had a number of pages of testimony, and that does not include this afternoon—441 pages of testimony in this case. But let us start out and trace, first, Mrs. Blauvelt's actions prior to the time of her decease. In tracing that, I am going to read to you from my notes, excerpts I have taken of the testimony here. I can pick out the books and go through them, but it would take a little longer. I am going to try to do it the shorter way.

So, we will start out with Saturday, the 22nd day of July, 1944. If counsel desires to check me on this I will refer him to the volume and page where this testimony is found. We find on Saturday morning—this is in Volume 3 at page 122,—Mrs. Vandiver, the lady who lived downstairs in the apartment, saw her that morning. She says that she came to her apartment on the way downtown, and she stayed ten or fifteen minutes. On cross examination counsel asked her—this is in Volume 3, page 132,—“What [fol. 585] time of day did you see her at that time? A—Well, I would say about 10; between 10 and 11. Q—Did you have quite a little visit at that time? A—Oh, about ten or fifteen minutes; I don't know.” Then we find out from Mrs. Watts, Maud B. Watts, that on Saturday Mrs. Watts met her in the city of Los Angeles at the tea room, which is described in her testimony; that they went to see a picture called “Mark Twain”, and after that they went to Sheetz at Seventh and Hill Streets, she leaving her at

4:30 or a quarter to 5 on Saturday afternoon. That appears in Volume 2, page 45.

“Q—With reference to the date of the 24th of July, 1944; which date, I believe, was on a Monday, when had you last seen her previous to that time? A—On Saturday, the 22nd, we were together— Q—Saturday, the 22nd of July? A—Yes, all day. Q—Where did you meet her that day? A—At Bullock's, up in the tea room, and we had lunch together, went across the street and saw a Mark Twain picture and then visited afterward. Q—About what time did you leave her on that day? A—I left her about 4:30 or a quarter to 5.” Then she mentioned leaving her at Sheetz.

Then, on Sunday, the 23rd of July, we find out from Mrs. Bailey, the lady who had previously been a neighbor of hers for some period of time prior to Mrs. Blauvelt's moving to the apartment there on South Catalina—that [fol. 586] on that Sunday afternoon she saw Mrs. Blauvelt at her home. Page 220, Volume 4.

“Q—About what time did you see her? A—She came about 2 o'clock in the afternoon. Q—How long did she remain at your home, Mrs. Bailey? A—Until a quarter of 5.”

You recall the lady said that she took her in her car, it was just a short distance from where she lived, and drove her up to the apartment and let her out. Now, that accounted for Sunday.

Let us get down to Monday, the 24th day of July, in the morning, Monday, the 24th day of July. It appears in Volume 2, page 71. Mrs. Massey, the apartment house manager, saw her twice on the 24th. I will refer to one time; and then I will take up these other times later on. Page 71: “Q—About what time would you say that you saw her? A—I saw her once at 10 o'clock; she was ready to go down—to come downtown, and about 3 or 3:30 she came back.”

Now, we find out from Mrs. Turner, the lady that worked at the lending library at Bullock's Downtown, that she, Mrs. Blauvelt, was in there that day of the 24th about 11:30, as I recall her testimony, in the morning, and that she then took out a book, which the lady produced here in court, called “D-Day,” and that was the last time she saw her alive.

[fol. 587] We then come back to the apartment and we find Mrs. Blauvelt coming into the apartment, according to Mrs. Massey and according to Miss Massey, who testified here today, some time between the hour of 3 and 3:30. Mrs. Massey was asked these questions on page 71, about the return: "Q—Now, will you state where you were when she came back? A—Right opposite the elevator, counting the linens, the laundry and linens, and putting it in the closet, in the linen closet. And I talked to her. I opened the elevator—she had a few packages, so I opened the door of the elevator so she could get in easy. That is the last time I saw her."

We find that she was dressed in blue.

"Q—What kind of coat did she have on? A—Well, it was something like this, but blue."

You recall Mrs. Massey at that time had a coat on, and she said, "Something like this, but blue." We find out from her daughter, with reference to the attire that she had on, that is, particularly the outer coat that she had on, when she was found by the officers, that was the way she was attired. So we have traced her actions up to the time she entered the apartment.

With reference to the testimony of Mrs. Turner concerning the book, it is interesting to note just a little detail that sometimes may be overlooked and which is shown by the photographs. One of the photographs introduced here [fol. 588] in evidence to show the living room of Mrs. Blauvelt as discovered by the officers the next day—I refer now to People's Exhibit No. 8, just to show you how the testimony can tie in. If you will look on the table shown there in the background, right on this table here, you can see the book "D-Day" sitting right on the table. That is certainly corroboration of the testimony of Mrs. Turner that the lady was in there and that she did procure that book.

Now, let us go back and trace what the evidence discloses concerning the rings as worn by Mrs. Blauvelt. We have the testimony of Mrs. Watts, who gives a rather comprehensive description of the rings. You remember, she is the lady that had known Mrs. Blauvelt for some period of time; she is the lady whose husband was appointed administrator of the estate. And here is what she said about the rings; page 49 of the transcript, Volume No. 2, giving you a description. She said one was a gold wedding ring. "A—

The next ring was a large solitaire, and I judge, by my own ring that I had, that it was about a carat and a half or a carat and a quarter. It was gold underneath, but the setting, the prongs were platinum. "Q—You describe this stone you call a solitaire as being a diamond? A—A diamond, a very blue, white, very clear diamond." "Q—Now, with reference to the third ring? A—Well, the solitaire in the center, that was all platinum, the whole ring was platinum and had been designed so that it was raised a little, and [fol. 589] the center stone was about the same size as the engagement or the other stone, the single; and then the surrounding stones were not chips; they were whole diamonds, but smaller."

Now, she gives a rather comprehensive description of those rings. And from the testimony of Mrs. Watts, I think that we can all say that these were rather valuable rings, particularly the stones.

Now, in so far as the possession and wearing of the rings by Mrs. Blauvelt, Mrs. Watts' testimony, which I indicated before, shows she saw her on Saturday, the 22nd of July, at the tea room at Bullock's, went to see the Mark Twain picture and left her at Sheetz's. She was asked whether she was wearing the gold wedding ring and the two diamond rings, and she said that she was. This lady also testified that she saw her at least once a week for the last six years, and she said that she always wore them except one time she had the one with the large stone off and she gave the reason, but the reason for that was stricken.

Mrs. Vandiver, the lady who lived downstairs, said that she was a resident of the apartment and she had been a friend of Mrs. Blauvelt's for a considerable period of time, and since the War she and Mrs. Blauvelt had been down to the Red Cross Tuesdays and Fridays, and I believe the place they attended was downtown in the Telephone Building, and although they did not start out together in the morning to go to the Red Cross on those days, they used to meet [fol. 590] at the street car, went downtown together and came home together. She was asked these questions with reference to her wearing rings, Volume 3, page 130: "Q—Now, Mrs. Vandiver, with reference to Stella Blauvelt, have you seen her wearing some diamond rings? A—I have. Q—More than once? A—All the time. Q—Do you recall any occasion when you saw her when she was not wearing them? A—No."

us see what Mrs. Bailey, the lady whom I previously mentioned,—Mrs. Blauvelt had gone over to her home on Sunday, the 23rd,—said about the rings.

“Q—About how long had you known Stella Blauvelt prior to her death? A—I think about twenty-five years.” This is Volume 4, page 219. She said, further on, that she had been a neighbor of hers up until the time Mrs. Blauvelt sold her home, she said, approximately two years ago, and that since that time she saw her quite frequently. She was the lady that said during the club season she saw her at least once a week, and I believe she said on Mondays, when the Ebell Club meets. And I believe counsel asked her when the club season was, and she said from July to October. She said that on this date, the 23rd, she was there from 2 until about a quarter to 5. Page 220 of Mrs. Bailey’s testimony, “Q—Did you notice whether on that day, at your home, meaning the 23rd of July, on Sunday, that she was wearing any rings? A—Yes, sir, she was. Q—Did you see them? A—I did.”

[fol. 591] Then, on page 221: “Q.— Over the period of years that you have known her, we will say, the last three or four years, limit it to that time, so far as her wearing rings are concerned, did you notice her wearing rings frequently, all the time, or what? A.— I never saw her without those rings.”

And then we have the little lady that testified here this morning, Mrs. Turner, from the lending library, who says that she observed her rings on the morning of the 24th. So we have actually traced her, practically right to the door of that apartment, wearing those rings.

What happened to the rings? You know, the testimony indicates that Mrs. Vandiver, the lady who she was accustomed to going to the Red Cross with on Tuesdays, and did go to the Red Cross, that Mrs. Blauvelt was not there on this particular Tuesday, which would be the 25th; that when she returned home, after dinner, she went up to the apartment, and, getting no answer, she went down and got the landlady, went back upstairs and observed what she has testified to here in the testimony as being fairly represented by the photographs here.

We find the officers coming; there are no rings there; a diligent search is made for the rings and they cannot be found. There is no testimony in this record whatsoever

to indicate that the rings were taken other than by this burglar. We put them in there but they are missing.

[fol. 592] Where do we hear next a question of a ring mentioned? By uncontradicted testimony, that is, the testimony of Frances Jean Turner, the woman that came into court here and testified that during the month of August, 1944, and she said that it occurred between the 10th and the 14th of August, 1944,—counsel asked her to fix the date,—she said that she contacted a man. "Who," counsel asked her, and she gave him his name, and as to having a conversation with him. She said she was able to place it between the 10th and the 14th of August—it was during the first two weeks of August. She said she was at this Colony Club at 29th and Western Avenue in the city of Los Angeles, she was seated at the bar, and she testified that she overheard this defendant say to another colored man, in substance,—here is what she testified to, page 230: "A.— Well, I just happened to overhear him ask this man if he would be interested in buying a diamond ring. Q.— What, if anything, did the man say? A.— He said no, he was not interested."

Counsel, at page 237, on cross examination, asked her with reference to the identity of the defendant: "I asked you if you may be mistaken about he being the man you saw at the Colony Club that evening. A.— No. Q.— You could not be mistaken? A.— No, I am positive it was him."

We have a positive identification. She testified, in response to some of counsel's further questions, that she had seen him previously. If you recall the testimony, some [fol. 593] place along in the record, we have them, in turn, calling each other by their first names, positive identification by someone that previously had known the defendant, as to hearing him make the statement to this man. The defendant has not taken the stand; he has not denied that; it is uncontradicted in the testimony. There he sits, not getting on the stand, not giving you what his version of the situation is. You have got the right, members of this jury, to consider the fact and consider that four hundred and some odd pages of testimony are uncontradicted from the lips of this defendant. Why? For example, during the time that Frances Turner was on the stand—it happened here in the courtroom—the defendant and his counsel went into a huddle, and then came up with some questions.

about a juke box. You remember that. He was there. That conversation happened. He has not denied it; it is uncontradicted.

So, I say that we have put the rings on Mrs. Blauvelt, put them on her on Saturday morning, unquestionably, and put them on her—it is a reasonable inference—at the time she went into the apartment.

Now, as near as we can, by the evidence in this case, come to the approximate time of her death by three witnesses. You recall the testimony of Mrs. May, who was living at the apartment right across the hall on this date. She testified that she was home on that day. And also by the testimony of Mr. Heck, the gentleman who was engaged down at the Southern California Telephone Company, who said that was his first day of vacation and he was downstairs in the apartment directly below the one which would be next door to Mrs. Blauvelt's had it been on the same floor. Now, in Mrs. May's testimony, I believe on cross examination, it appears in the record—my recollection of it—that counsel asked her, after she heard what she described in the testimony as being a frightened voice, of Mrs. Blauvelt saying, "What do you want of me?" Counsel asked her if she could fix the time, and she fixed the time at 3:30. My recollection is that she testified that she looked at the clock. That ties in with the testimony of Mr. Heck. Mr. Heck says, in so far as voices were concerned, he was not able to distinguish the voices, but he heard a scream. That is the way he described it, as being a scream. Mind you, he is downstairs.

I think from that testimony it is reasonable to assume, in view of the other testimony in this case, and particularly the fingerprints, and particularly what we heard Mrs. May say that she heard before she heard this voice say, "What do you want of me?" she heard some pounding, that this defendant, Dewey Adamson, gained entrance to that apartment by going in through this door; he was there in the apartment; that the people downstairs put her coming upstairs between 3 and 3:30, as best they can—Mrs. Massey [fol. 595] and her daughter—she comes up there and inserts the key in the lock; the defendant is in the apartment and he grabs her. You have seen the results in the photographs; you have seen that the rings were missing.

Now, with reference to the cause of death I am going to read just what Dr. Webb says; I will have to go back to the

testimony of Dr. Webb. The autopsy on Mrs. Blaauvelt was performed on the date of the 26th, and as I recall his testimony, along some time about 11 o'clock or 11:45 in the morning. This is reading from page 13: "Q.— Doctor, I believe you testified that you saw her on the 26th of July at what time, please? A.— I saw the body on the 26th day of July at 11:48 a. m. Q.— And, Doctor, could you express an opinion based on your experience as to how long, approximately, at that time Stella Blaauvelt had been dead, in hours? A.— The body was in pretty fair condition and she had been dead possibly close to forty-eight hours."

Figuring back forty-eight hours, approximately, and I think you will come to approximately the time.

On page 18, counsel, on cross examination, asked the doctor this question: "Q. Now, you testified, Doctor, that the woman had been dead, in your opinion, close to forty-eight hours? A. Yes, sir. Q. Could it have been longer than that? A. Well, the indications wouldn't lead you to suspect longer, other than it might have been an hour longer or an hour or two less. But I couldn't state right [fol. 596] to the minute. Q. It wouldn't vary within an hour or two either way? A. I wouldn't think so."

The doctor does not tie himself down to exactly forty-eight hours, by any manner of means, but that testimony of the doctor ties right in with this 3:30 occurrence on the date of the 24th.

Now, with reference to the cause of death—I am not going to read all of it, but here is what the doctor testified, as far as the pertinent points are concerned, of the autopsy performed by him: "There is extensive ecchymosis around the left eye, over the left side of the face extended upward into the left side front of the head and over the left ear. The lips are bruised and have a swollen appearance. There are three superficial bruised grooves, three-eighths of an inch across, extending around the upper neck region. An electric extension cord was removed from around the neck. On the left side the groove is slightly excoriated. From these findings it was determined that the immediate cause of death was strangulation due to constriction around the neck. Other conditions contusion of the brain due to trauma to the head."

The doctor was asked with reference to the bruise on the face, this question, page 14: "Q. And have you ex-

pressed any opinion as to how a bruise of that type or character might have been caused, Doctor? A. It is very [fol. 597] hard to state the method of causing a bruise like that which is extensive over that side. All that I can state is that either some object hit that head or the head hit some object, and that object was not a sharp or cutting object."

So we find that in so far as the cause of death is concerned, it was due to strangulation.

Going to some of the other testimony in this case, Mr. Pinker testified to making certain observations there and finding certain things at the scene. He is the witness that testified that he was there when the Coroner deputies removed the body, and when the body was removed, underneath the body he found the foot portion of this stocking, and that was introduced here into evidence. We placed in evidence the tops of three stockings found in the room of the defendant. From the appearance, I think it is readily determinable that they are women's stockings. They are tied at the top. We have the top part of the stocking that Mrs. Blauvelt had on, missing, and the whole stocking she also had on the other leg missing. Counsel on cross-examination of one of the witnesses—I believe it was Miss Massey, one of the women that saw her on that date, last saw her alive, and asked her if she was wearing stockings, and she said she was. The defendant has not seen fit to explain what these stockings are doing in his room. It is rather an unusual situation where we find stockings gone and three women's stockings in the room of the defendant. This might be a little homely expression, but possibly would come into the same category, as the man that went out to sell and did sell some chicken feed, and we find out that that man had chickens when he got home and would have use for that. Or you take another example. You find in the burglary of a store having painters' supplies, one particular type of painting equipment is used by a person and that is gone, and you go over to the individual's home who is accused of it and you find that item there. Now, I do not say that the type of stockings found in the room of the defendant are from the same stocking that was found underneath her. The evidence does not indicate that. I will say to you, frankly, they are not. But we do have this circumstance of finding those stocking tops there in the room of the defendant. When I was a kid, long before I started to get bald-headed—

maybe that is one of the reasons I am bald-headed, coupled with several other factors,—I can remember of getting some old stockings, taking the top off and making a stocking cap. Now, once in a while young people do that, and once in a while older people do it. At least, we have those in the possession of this defendant. No explanation; nothing said or testified by him as to what they are doing in his room. The record is silent.

Now, let us go down to the time that the body of Mrs. Blauvelt was discovered. We have, as I mentioned a few [fol. 599] moments before, Mrs. Vandiver, her friend, meets her at the Red Cross on Tuesday, coming to her room and she testified that she observed the Times newspaper at the door, that she went downstairs and she got Mrs. Massey, Mrs. Massey came up, put the key in the door, opened the door and went in the room, and their primary attention was directed, naturally, as anyone would, to the person lying there on the floor. Now, these photographs which were introduced here in evidence, and which were shown to Mrs. Vandiver—at least, some of them were—she said they fairly depict what she observed when she went in the room there, possibly not exactly from this angle. But we have the garment over the body; we have the two pillows over the body. It is interesting to note, even in this picture, you can see, on the left hand, there is a ring there, which is unquestionably a wedding ring. No other ring shown on the photograph. That is what these two ladies saw; they left; did not go back to the room, and phoned the police.

We placed Mr. Long here on the stand, and he testified as to what he saw there. He identified the pictures and said they were fair representations of what he observed there. After Mr. Long arrived he made some calls to other officers and those other officers came. He told you that with reference to these two pillows he picked up the top pillow and on the bottom side of that top pillow was a substance which appeared to be blood. He then said, with [fol. 600] reference to the top side of the pillow underneath, that there was no appearance of blood on that, but when he got on the bottom side of it there was an appearance of blood there. It was either Mr. Long or Mr. Brennan that testified that with reference to that blood—I believe it was Mr. Brennan—he observed the same condition as far as the pillows are concerned and that at that time it

appeared to be dry. That in itself, with reference to the condition of those pillows there, appearing to be blood, indicate that the defendant had remained in that apartment for some considerable period of time; a considerable period of time; unquestionably those pillows were changed. Why, I don't know. The man over here knows, but he does not tell. We have, in addition to the situation on the pillows—when I say a long period of time, that statement is corroborated by the testimony of Mrs. May, the lady across the hall. Now, she is, you will recall, that afternoon seated on the divan, and then later on, I believe she said around 5:30 or 6 o'clock, she went to bed. She is not definite as to the time. Counsel read it from the transcript of the preliminary hearing, and I think her time was some place between 6:30 and 8:30; somewhere in that vicinity. She says she heard a key in the lock and then she heard someone go down the back stairs. We know the key is missing; the key is gone, too. Mrs. Blauvelt, unquestionably, had the key to get in the house. The key is gone. This [fol. 601] situation with reference to those pillows corroborates that testimony of Mrs. May—

The Court: I think we will take our recess, Mr. Roll; we have got to break somewhere. The jury keep in mind you are not to talk about the case or form or express any opinion. Take a recess until 9:30 tomorrow morning.

(Whereupon an adjournment was taken until Tuesday, November 21, 1944, at 9:30 o'clock a. m.)

[fol. 602] Tuesday, November 21, 1944; 9:30 o'clock A. M.

The Court: In the case on trial the record will show the jury, counsel and the defendant present. You may proceed with the argument, Mr. Roll.

Mr. Roll: May it please your Honor, counsel for the defendant and members of the jury: At the recess last evening we were discussing something with relation to the pillows on the body of Mrs. Blauvelt, as found there by the officers. In People's Exhibit 8, which you have seen and which has been testified to here, reflects what the officers observed so far as the pillows were concerned. They have testified there were two pillows there, the large pillow being the one on top, and I think by looking at the chair which

is shown in the photograph you can see that the large pillow came from this chair over here; it is the same material. It is one of those chairs that the back can be taken out. Now, both Mr. Long who, apparently, was one of the first officers there, and Mr. Brennan, testified that in taking these pillows off, when they got to the bottom side of this first pillow, there was a substance which had the appearance of blood on the bottom side; that there was no appearance of blood on the top side of the smaller pillow underneath, but when they removed the smaller pillow off the face there was a substance which had the appearance of blood on the [fol. 603] inner side of the small pillow. You know and I know that it would take some period of time for blood to dry. For example, if this larger pillow, without the blood having been comparatively dry, had been placed on top of the smaller pillow—naturally, it would be placed there with the blood on the inner side—it would have left some blood on the top side of the smaller pillow. But none was observed; none was found. I think it is a reasonable deduction to say that this larger pillow was apparently dry before it was placed back on the body. Now, there is one explanation for that, and the reasonable explanation would be this: That one of these pillows was used to stifle or snuff the breath out or cause Mrs. Blauvelt to remain quiet.

Going back to the testimony of Dr. Webb. We find that the face, as depicted in the photograph, is in pretty bad condition; Dr. Webb said that that condition was caused either by some object hitting the face or the face hitting some object. I think it is reasonable to assume that the pillow was used to momentarily snuff out the breath of Mrs. Blauvelt, and then as the final thing that was done to remove the breath of life from Mrs. Blauvelt, was to jerk off this light cord that is attached to the lamp and wrap it around the neck three times, as shown in this photograph here.

Now, while we are talking about this lamp cord causing her death by strangulation, I desire to direct your attention [fol. 604] again back to an instruction which I believe his Honor will give you, as I stated to you yesterday, as to the degrees of murder. I believe I told you yesterday that the court would instruct you that murder is the unlawful killing of a human being with malice aforethought. When we get into the degrees of murder, the court will tell you that all murder which is perpetrated by means of poison

or by lying in wait or by torture or in the perpetration or attempt to perpetrate rape, robbery, arson and a couple of other things; is murder in the first degree. Now, I direct your particular attention to that portion of the law which says that all murder which is perpetrated by means of torture is, in and of itself, murder in the first degree. And I state to you, members of this jury, that using this cord to snuff out that life by strangulation was unquestionably and undoubtedly murder by torture. So, that is another theory separate and apart from the theory of burglary, which makes this effectually and actually first degree murder. I think that is reasonable, and I think the law bears me out when I say that when a murder is perpetrated by means of strangulation, such as was done here, it is a murder by torture. Now, I directed your attention to this situation with reference to the pillows for the purpose of showing you that a considerable period of time elapsed there in the room while this defendant was in there.

Now, there is in evidence here, and you can consider [fol. 605] that when you get into the jury room, and I am going to show you the pictures now and ask you to look at them later on, when you get into the jury room—this is Exhibit No. 34. You remember when Mr. Brennan was on the stand I asked him to describe the condition of the clothing of Mrs. Blauvelt there after they had taken the coat off of her body, and I had him point out on me, roughly, with reference to the appearance of the dress and the apparent location of the dress, how it was pulled up. As I recall his testimony, he indicated about my hip bone on one side and on the other side about 4 inches below. This photograph will depict that partly, but, as I recall, Mr. Brennan testified that that photograph was taken for the purpose of showing that the under garments or pants that Mrs. Blauvelt had on were turned across the crotch. Now, by looking at People's Exhibit 34, you can see in that exhibit what appears to be a portion of a woman's garment used for the purpose of holding up the stockings. We know from the testimony that the stockings are taken off. We know that the shoes are off when the body is found. We know that the lower portion of her body, when the brown coat is removed, is entirely exposed up to the position that Mr. Brennan said. Now, the defendant has not explained that. He has not told you why. I would have liked to find out, if he had gotten on the stand, and I think you would

have liked to have known why. I ask you, when you get [fol. 606] into the jury room, to look at People's Exhibit 34.

Now, going back—and I referred to this yesterday—to the testimony here in the record of Catherine May. I will read to you some of her testimony. Reading from page 307: "Early in the afternoon I heard a hammering in the hallway, and still a little later I thought someone was knocking at my door, my door kind of rattled, and I listened again and heard another sound, but I knew definitely it was not my door anyone was knocking at, and still later in the afternoon, about 3:30, I heard—Q—Wait a minute. Now, let me ask you with reference to this hammering. Can you fix that approximately, what time the noise that sounded like a hammer to you? A—Well, I could not say the definite time, but I would say it was, oh, perhaps an hour before 3:30 when I heard Mrs. Blauvelt, an hour or an hour and a half. Q—Now, you started to mention approximately at 3:30 you heard something. What did you hear at approximately 3:30? A—I heard Mrs. Blauvelt say, 'What do you want of me?' Q—Where were you in your apartment at that time, do you remember? A—I was on the divan. Q—On the divan? A—Yes. Q—Did you hear any audible words in reply to Mrs. Blauvelt's voice saying, 'What do you want of me?' A—No, I just heard a low mumble; I could not distinguish what it was. Q—You say you heard a low mumble but you could not distinguish the [fol. 607] words? A—No, I could not distinguish the words. Q—Can you describe the tone of Mrs. Blauvelt's voice? A—She sounded frightened; her voice did not sound natural. Q—What, after that, was the next thing that you recall hearing? A—Well, later that evening I heard a key used in the lock of her door and, still later, I heard someone come out of her door and go down the back stairway. Q—Now, is there any way you can fix the time of those two instances? A—Well, I can't tell definitely. I would say it was after 6:30 and before 8, or around 8, that I heard the key used, but it was later than that that I heard someone going down the back stairway."

I will go over to page 312, the cross examination as to some of these times. This lady could not fix the times. Counsel, on page 312, on cross examination, asked her this question: "Q—Now, what time was it you heard Mrs.

Blauvelt's voice say, 'What do you want of me?' A—"That was at 3:30 in the afternoon."

This is the only approximate, definite time that she actually fixed.

"Q—How do you fix that time? A—I looked at the clock. Q—You looked at the clock after you heard the voice speak or before? A—Well, that I don't remember. It was probably after, because I wouldn't have looked before."

Then, further on: "Q—Now, what was the next thing that [fol. 608] you heard that was unusual? A—The key being used in the lock—that was not unusual; I just noticed it after hearing the remark in the afternoon. Q—Then, about what time was you heard the key in the lock? A—The time I am not sure of. It could have been any time between 6 and 8 o'clock. Q—I am sorry; I did not hear. A—I said it could have been any time from 6 until 8 o'clock. The time I didn't notice. Q—It was some time between 6 and 8 o'clock. Well, can you tell us about how much time elapsed from the time that you heard Mrs. Blauvelt's voice until you heard the key in the lock? A—No, I can't."

Now, going over further on that same subject to page 319 of the transcript, still on cross examination by Mr. Safer: "Q—Can you give us an approximation of the time that elapsed between the time you heard the key in the lock and the door close and the footsteps? A—No, I cannot; I haven't any idea what time elapsed. Q—Well, would it be a matter of five or ten minutes, or a matter of an hour or two hours? A—I don't know; I don't remember."

Now, we do know, however, that a considerable period of time elapsed before the room was left.

Now, let us talk about the manner of entrance, how this defendant got in the place. You all remember Mr. Frick, the rather small gentleman who said, in response to counsel's questions, that he did things at the order of his [fol. 609] wife; he is the man that worked there as janitor. Counsel wanted to know, after he had testified as to the facts that he had gone in there, why he went in there, and he started to tell about a lock being changed, that they didn't have the key, and then counsel wanted to know at whose suggestion he went in, and the witness said, "My wife," and the court said, "That settles that." I think you all recall Mr. Frick. I am going to read some of his testimony here concerning this door and some of the mat-

ters connected therewith. You recall that after I found out his occupation, how long he had been there, and his general duties there, I asked these questions, reading from Volume 3, at page 161: "Q—Now, with reference to that garbage disposal unit, I am going to ask you some questions, Mr. Frick. How tall are you, sir? A—Pardon? Q—What is your height? How tall are you? A—5 foot 7½. Q—What is your weight? A—130. Q—Do you want to step down here, Mr. Frick, right alongside of where the defendant is seated? A—Yes." You remember at that time he walked over and stood in this position, and I said, "I will ask if the defendant might stand, please." And the court said, "The defendant will stand for the purpose of identification." You remember that the defendant stood right alongside of Mr. Frick, and from that observation you could very easily see there was not practically any difference in the size and [fol. 610] approximate weight of these two individuals.

Mr. Frick was then asked these questions: "Q—Now, did you have occasion, Mr. Frick, some time after the date of the 25th of July, 1944, to yourself try and—not try, but crawl through that garbage disposal unit, from D-1 to D-2?"—and pointed it out on the board, the position of D-1 comes from the hallway into the kitchen. His answer is: "Yes, sir. Q—Just tell us what you did. Did you get through or did you get stuck? A—No, sir, there was plenty of room. Q—You did get through? A—Yes, sir. Q—About when did you do that, do you know? A—Oh, about six weeks ago."

Now, going over to page 165: "Q—Now, directing your attention, now, sir, to the date on which Mrs. Blauvelt's body was found, the morning of that date, the 25th day of July, 1944, did you on that morning have occasion to go up on the fourth floor and do anything with reference to the garbage in Apartment 410? A—Yes, sir. Q—What, if anything, did you do, sir? A—Pardon? Q—What did you do with reference to that? A—Well, I found that the garbage tin was not in the place where Mrs. Blauvelt usually kept it. Q—Where was it, sir? A—It was in the corner, in the other corner, I would say, the southwest corner of the service board. Q—About how large a garbage container was that, can you indicate with your hands how big a container it [fol. 611] was? A—Oh, the container is about 8 or, I will say, 9 inches, the container about 12 inches high. Q—About 12 inches high and 8 or 9 inches across? Yes. Q—And in

so far as the garbage itself was concerned, did you pull the can out that morning? A—Yes, sir. Q—Do you recall whether there was any garbage in there or whether there was not? A—Yes, sir. Q—Well, what was the situation? A—There was nothing in it. Q—Nothing there? A—No, sir. Q—Now, in doing that, Mr. Frick, can you tell me when you reached in to get the garbage out, did you bend down to do it, or do you do it from a crouched position or get down on your hands and knees, or how do you do it? A—Well, I would say a crouch. Q—Now, did you look into the unit at the time, or just reach in and get the can and pull it out? A—I just pulled it out; I didn't look. Q—You didn't pay any attention? A—I didn't pay any attention only to where the tin was located. Q—So you are unable to say anything with reference to the door there on the inside? A—No, I don't know about that. Q—You did not look for that at all? A—No, sir, I did not look."

Now, we will go to page 170, Volume 4; this is on cross-examination; page 170, line 13: "Q—Now, was there a shelf in that garbage compartment at the time you made that experiment? A—Yes, sir. Q—Did you crawl—you did crawl through there, didn't you? A—Yes, sir. Q—Did [fol. 612] you crawl under or over the shelf? A—Under. Q—Under the shelf. Are there some pipes in there in that compartment? A—No, sir. Q—No pipes in that— A—Just lined with tin."

Now, reading on page 185—these questions were asked on redirect examination: "Q—Mr. Frick, counsel asked you with reference to the locks. Did you have any complaint from any source around the 24th or 25th of July or we will say, the 22nd, about that lock being out of order?"

There had been testimony concerning the lock on the door, by Mr. Frick, as to how the lock would open; you could push a little tumbler on the side of the lock; I think you recall that.

"A—No, sir. Q—Did you have any complaint about that door there, the inside door, which you marked on the diagram as D-2? Anything being wrong with that? A—Leading to the kitchen? Q—Yes, sir. A—No, sir. Q—Did you have any complaint about that? A—No, sir."

Now, from that testimony as given by Mr. Frick, we can say that in so far as that door is concerned at the time Mrs. Blauvelt lived there, that door unquestionably was intact. There is no complaint made about any condition of the

door in the kitchen, and this gentleman is, apparently, the one that does minor repairs, does the work around there, and the man who would know about it if there was [fol. 613] something wrong. So we know that from that testimony that door was intact.

Now, with reference to the door itself. We find from the testimony of Mr. Long, the first officer that arrived there, and he testified concerning People's Exhibit No. 18, that this door was approximately in this position at the time that he arrived there. With reference to the papers under the door, he said that the papers were not under the door. Counsel examined him quite extensively concerning that. I don't know whether counsel has forgotten it. Mr. Ferguson, the gentleman that dusted the prints, had testified concerning how the papers got under the door. Mr. Ferguson says that he put the papers under the door there so that the dusting powder would not get on the floor.

Now, let us see, in view of some of the subsequent cross examination of some witnesses yesterday, what Mr. Ferguson has to say as to what occurred there, what he did, what transpired. I am reading from page 198: "Q—Directing your attention to this photograph, Mr. Ferguson, I will ask you to examine that photograph and state whether or not that is a fair representation of the kitchen in apartment 410 at 744 South Catalina Street. A—Yes, it is. Q—Now, I notice in that photograph that there are some newspapers there on the floor. Were those papers there when you arrived? A—No, I put those papers on the floor myself to keep the black powder from getting on the floor. [fol. 614] Q—I notice in the photograph, right in the forepart of the photograph, what appears to be a door. Where was that door there in the apartment when you first saw it? A—Approximately the same place it is now in the photograph."

Going over to page 200: "Q—Now, with reference to People's Exhibit No. 6, did you do what you call dust People's Exhibit 6 out there at the apartment itself on the evening of the 25th of July, 1944, for the purpose of determining whether or not there were any fingerprints on that door? A—I did. Q—And did you find some fingerprints on the door? A—I did. Q—What did you do after you found the prints on the door? A—After I found prints I made labels, placed them next to the print where they

would show in the photograph, placed the camera over the label and the print, and photographed the print and the label on the door. Q—How many different photographs did you take of fingerprints on the door there? I mean, different locations. A—Three different photographs of prints on the door. Q—And then later on—I will get into this later—later on did you cover over that area with this Scotch tape, where you took the photographs? A—I did.”

Reading from page 202: “Q—Do you have in your possession at this time the negatives of those pictures that you took? A—I do. Q—And do you also have smaller [fol. 615] developed pictures from there with you, or not? A—I do.”

He then produced the smaller pictures which were marked into evidence. They were marked, as I recall, 19-A, B and C.

Reading now from page 210—this is cross examination by Mr. Safer—page 210, lines 8 to 16: “Q—You testified that you placed the papers that appear in this picture, Exhibit 18, underneath the door? A—I did. Q—Did you handle the door in doing that? A—I merely touched the edges very carefully while I was placing the papers under it. Q—You touched the edges of the door? A—I touched the edges only.”

Now, we find from his testimony that there at the scene on the night of the 25th he took and dusted this door and took what he describes to be only three prints that could possibly be identified, two on the front side of the door and one on the reverse side of the door, and puts a label on the door—and it is shown here in the pictures—so that film itself could be easily identified, as to what portion of the door it came off of, on all three positions. Then, in addition to that, he did what he called—took a lift print, which is introduced here in evidence. Now, so there won't be any question whatsoever, and there can not be any question whatsoever, with reference to these enlargements and these photographs as being the ones that came from the door, [fol. 616] you will recall the testimony of Mr. Rogers—I will go into it in detail later on—and I think I should point out, at least, in two places in the transcript where Mr. Rogers testified that he received the negatives, those being the negatives that Mr. Ferguson first, apparently, took there that night. He received those negatives and he compared the negatives and the small pictures from those negatives

with the actual prints on the door. That was the first thing he did. And he said those negatives—those photographs were pictures of the prints on the door.

Now, the reason I am covering this at this time in some detail is due to several factors. Counsel spent considerable time yesterday questioning about the possibility of forging prints. That was the first thesis. We find out from the testimony there was no forgery whatsoever. Then, the second attack that he made was when Mr. Brennan and Mr. Wiseman were testifying. You remember Mr. Brennan testified that the door was brought out there in the police station; shown to the defendant, the prints pointed out to him, and then he wants to know if the defendant did not touch the door. Grasping at straws; trying to explain away these prints. We find out that he did not touch the door at the station, and he has not testified here on the stand that he ever touched the door there at the station. The record is silent as to that. That is the reason I am going into some [fol. 617] of this in detail, with reference to those prints there on the door. This may be diverting a little bit at this time, but this is not the only occasion when there has been a grasping at straws in this case.

You remember, when Mrs. Vandiver was on the stand, counsel in cross examination asked her about some stranger, some newsboys being in there. She said yes, there was one there. Well, to let you see, we brought in Kenneth Osmon, the fifteen year old boy. Grasping at straws; trying to pin it on somebody else; trying to get away from these fingerprints. I am glad I brought him in. I wanted you to see him.

Now, going back to the fingerprints. Mr. Ferguson testified with reference to taking the prints. Then we placed Mr. Larbaig on the stand. Mr. Larbaig testified that on the date of the 31st of August, 1944, he himself rolled two fingerprint cards of this defendant. They have been marked in evidence as People's Exhibits 22 and 23. He said, with reference to the time that he rolled People's Exhibit 22, which appears right on the face of the card, that was done at 8-31-44, at 2:10 p. m.; and with reference to People's Exhibit 23 in this case, that was rolled at 2:12 p. m., on the same date. Now, I am going to show you something interesting with reference to some of the questions counsel asked with reference to possible differences in [fol. 618] prints. Now, mind you, these prints were rolled

under ideal conditions. I am going to pick out one print that is involved here, the one on the back of this door. Here are two prints rolled within two minutes of each other, and there is a difference between those prints and this print here in several respects. If you will notice, a portion of the top of the print does not show quite as much as it does down here. We can all see that. Just notice those prints, the similar portion, here and here, and then the prints down here. It appears to be a little more full in the bottom also. But in so far as what we call the pattern area is concerned, we certainly have the pattern area there. At any rate, Mr. Larbaig testified to rolling these prints. He then testified that from the rolled card—I believe No. 23—either one of the two of them—either 22 or 23; it may have been 22—he made the enlargement which has been marked People's Exhibit 25. This is the one, you remember. He also caused to be made an enlargement of the print which is on the back side of the door here, which is People's Exhibit 24. He testified at considerable length. He explained to you the points of identity. He said that in his opinion the two prints were identical and were the prints of the defendant. Now, here is People's Exhibit 26; here is the blown-up picture of the negative in evidence; what Mr. Ferguson testified that he placed on there at the time he made it, a card [fol. 619] in his own handwriting. It shows up pretty well in this other picture. With reference to 26 and 27, we have these photographs enlarged by Mr. Larbaig. He testifies that these photographs are photographs of the right ring and right little finger. He makes a comparison and shows you in detail how they compare. He said that they are the prints of one and the same person and the prints of the defendant. That is two more prints—that is three. Then, we have in evidence here the next two photographs, Nos. 29 and 28, one being the blown-up print, taken on the door there by Mr. Ferguson, and so labeled on it; the next print being the blown-up from the fingerprint card of the defendant. He makes a comparison and indicates those fingers are the fingers of one and the same person, the fingerprints of the defendant. I then asked Mr. Larbaig to place there on the blackboard the relative position—indicated up in this corner—of those prints on the door. This indicates the front part of the door, the door knob and the hinges down here, and he indicates where those fingers were. Now, taking this door—I will place it down here—we will

get the same relative position as this top photograph—and bear in mind this situation with reference to the door—I think it is fairly well shown here on the photograph of the kitchen—I cannot find it—Well, at any rate, we have the photograph here. Wait a minute. Here it is. You [fol. 620] recall the testimony is that with reference to the hinge section of the door, which is over here against the wall—in other words, there is a small space here, which is against the wall, the hinge part of the door there on that side. In other words, the wall, in the photograph, comes right out at an angle; if we can assume that; this is the wall coming right out here on this side of this door. Now, just look at that door with respect to the position of the fingers, and considering where this wall comes out here, and taking this side over here, the left index finger, left middle, and left ring—index, middle and ring—now, watch the location there. If you are on the outside, if you put them on this way, as I have got them here—I don't know whether you can see me or not—I will get this door up higher—

The Court: If you want to come up here, Mr. Roll, it is all right.

Mr. Roll: No, I don't think so, your Honor. Can you hold it here Mr. Davis?

(Mr. Davis does as requested.)

Mr. Roll: Also in this connection—it is shown on the photographs—we have the tips of the fingers over in the center area. The trouble is, we blocked that off. Maybe this will be better. You still have to put this wall up here, and bear that in mind also. Now, if I come on the face side of the door and start putting my fingers there that [fol. 621] way—I have got them headed the wrong way, because the tips are in this way—if I get around on this side, I have got the wall there. See? The left index, left middle and left ring. You can do the same thing with reference to that door, closed, with reference to the other side. So we have the door fitted onto this place here. With the door shut I say it is a physical impossibility to put those fingerprints on there, standing in front of that door; you cannot put them on in that position, and I don't care if you are a contortionist. We have to have fingerprints on the inside of the door.

Now, going into the testimony of Mr. Rogers. Mr. Rogers was appointed by the court and is known as the court's witness. He was appointed under the provisions of Section 1781 of the Code of Civil Procedure. The court has the power and can in any case, either civil or criminal, in a matter involving expert testimony, either on his own motion or on motion of either side, appoint a qualified expert to make an examination and come in and testify. When a man is appointed the court's expert, he is the court's witness; he is not a witness for one side or the other. The theory being to get someone entirely impartial and removed. And I say that in so far as Mr. Rogers is concerned, he was entirely impartial and removed as far as the testimony in this case is concerned. Let us look at the transcript in this case, so far as Mr. Rogers' testimony is concerned. I [fol. 622] think you will find several places in the transcript where he tells you that—let's see if I have it marked here. Page 358: "Q—In so far, Mr. Rogers, as your appointment in this case is concerned, you were appointed by the court; is that correct? A—Yes, sir. Q—You have not consulted, or have you consulted with Mr. Larbaig concerning this whatsoever? A—No, sir. The Court:—You really did not know what the case was about until it was handed to you? A—No, I didn't know the circumstances of the case. In fact, I had forgotten the details of the case. I knew nothing of it until the court handed me the exhibits yesterday afternoon."

So, from Mr. Rogers' standpoint, he came in here, you might say, cold, with reference to any knowledge of the fingerprints or anything; he made comparisons and he came in here and he testified. As I say, he at first said that he checked the negatives and checked the small prints against the actual pictures of the prints on the door and said they were pictures of the prints on the door. He rolled the prints of the defendant, People's Exhibit No. 30, and made an enlargement of one of the prints, which has been marked here People's Exhibit 31. This is an enlargement of the print on the reverse side of the door. He testified in detail as to making a comparison between those two prints, and he used the diagram on the blackboard, and I think all of us got a good lecture on fingerprints not only from Mr. [fol. 623] Rogers but from Mr. Larbaig. He told you all of his experience, all of his background, and said in his

opinion these prints were the prints of the defendant. Now, not only these, but with reference to the other prints, they were the prints of the defendant.

I happened to be working on this case, just as a little side line last night, and being married, my wife likes to listen to the radio—I have no control of that situation—sometimes, subconsciously, you are working on something and listening to something else. Dr. I. Q. was on the radio last night, and I heard him ask this question, which I knew immediately what it was, and I thought to myself, “Well, all the jurors would be able to answer the question that was asked.” They asked this question of some individual there—and I think they got \$22.00 for answering it—they didn’t answer it correctly—they said, “If you went to a police station and saw some individual at the police station who was interested in a subject, and he said, ‘Loops, whorls, arches and tented arches’, what particular type of work would that man be in?” Well, the man didn’t know the answer. I think you and I, and anyone else in the courtroom would certainly be able to answer that question last night. That is just the way it passed, and I happened to be working on the testimony of Mr. Rogers when that matter was discussed on the radio.

I think all of us would agree, with reference to both of [fol. 624] those gentlemen who testified here, that they each went to great pains to explain fingerprints generally, how they are made, went into details concerning how you make comparisons, how you classify prints, and told you all about them.

Now, fingerprints are something that the most of us have general knowledge of. We know generally what some of the uses are. They are used in many ways other than in police work. They are used out among industries, particularly those who are engaged in defense work. Practically all the individuals working out there have fingerprints made. You take everyone that is in the armed service—we have some 12,000,000 men in the Armed Service—the fingerprints of all those men are taken before they go into the service, and they are used. Some of your banking institutions at this time use fingerprints. You people that have a California driver’s license—I do not know whether they are still doing it, but they did do it for a while, and it is voluntary on your part, if you desire, you can have your

print placed on your driver's license card. The Armed Service use these prints in several ways. If there is a lost man or a man goes A. W. O. L. or something like that and they want to identify the individual, they do it by means of fingerprints. With reference to your driver's license, it comes in handy there, and with reference to your defense plants it comes in handy there. The Federal Bureau of Investigation has, unquestionably, on file lots of prints. [fol. 625] Everyone, for example, working under Civil Service, at least in the State and local Government, is fingerprinted. I do not know how many times they have taken my fingerprints, sent them back to Washington and kept them there. It is a method that is readily and easily recognized as being a proper and correct method of identification.

We found out from these two witnesses, both Mr. Rogers and Mr. Larbaig, if I were to ask them to put the figures there on the board as to how someone mathematically figured out the possibility of two persons having like fingerprints, I don't think there would be enough room on the board to get all those ciphers or zeros on it, because it is just a possibility.

So, I say, so far as the fingerprints in this case are concerned, they were positively and definitely identified as being the prints of the defendant. That being so, we know the defendant came in through that garbage disposal door; we know he was in the apartment; no question about it.

You were questioned here with reference to direct and circumstantial evidence. You were asked if you had any objection against circumstantial evidence, and you all said that you did not have.

You take the testimony in this case up to the time of 3:30—between 3 and 3:30, or whatever time these two ladies, [fol. 626] Mrs. Massey and her daughter, put Mrs. Blauvelt as coming into the apartment; that testimony was direct evidence. The testimony of Mrs. May and the gentleman downstairs, as to what they heard; that is direct evidence. You take it up to when the officers came in there—even before they came in there—when Mrs. Vandiver and Mrs. Massey came up there and saw what they testified they saw; that is direct evidence; and from there on.

With reference to the fingerprints, I say that is real, tangible evidence.

Just supposing, for example, that Mrs. May, the lady that lived across the hall, had on some occasion on this date, the 24th, say on the occasion that this defendant left the premises, come out of the door and saw a fleeting glance or glimpse of this defendant leaving, and she would come in here and testify with reference to her possible identification of this man. You have to take the conditions under which she identified him. And assume from the evidence in this case—we can properly assume it—she never knew the man before, she never had seen him before—she was in a different category from Mrs. Turner, who saw him down there in the Colony Club, had seen him at previous times, knew the man, was acquainted with him—if she just had a fleeting glimpse and she came in here and said the man looked similar, or she was positive as to his identification, counsel would cross examine, and correctly so, “How much [fol. 627] time elapsed from the time you first saw him?” “I don’t remember the time.” “How was he dressed?” “I don’t know.” “What size was he?” “I don’t know.”

We can go further than that and suppose that the Masseys had seen someone going out that back door. I wouldn’t trade that testimony for those fingerprints. I say those fingerprints are better than an identification by an individual. You know and I know that individuals can be mistaken in identity. It all depends on the conditions under which they see them, and how long they are with them, the individual that is testifying.

For example, if there is a case which is prosecuted in court, for example, a robbery case, there may be ten robberies before we can get someone that is able, out of ten people, to identify the man. You eliminate a lot of them there. But you cannot get away from these fingerprints. There is not one of them. There are one, two, three, four, five, and one in the back is six. And they are still right there on the door.

I do not know, but maybe Providence had something to do with this case. We know Our Maker, in His infinite wisdom, gave us all something that was different. He fingerprinted us. Those fingerprints were left on that door just as a beacon light would be left searching for someone. Those fingerprints were pointing to one man, the defendant. He was there. He did it. That is what those [fol. 628] prints tell us.

The Court: We will take a recess at this time. The jury will keep in mind that you are not to talk about the case or form or express an opinion.

(Recess.)

The Court: The record will show the jury, counsel and the defendant present. You may proceed.

Mr. Roll: I have said all I desire to say about fingerprints, in my opening argument to you. I will now pass to another little phase of the case which I think some of the physical evidence indicates.

You recall the testimony of the landlady and her daughter with reference to seeing her at the time she came into the apartment; you remember the landlady said she was working around the linen closet or near the vicinity there, and they both told you that she was attired in a blue coat. We find from the photographs there that the coat that she had on—one lady described it as smart in appearance, the coat she had on. We further find from these two ladies she was carrying some packages at the time she came in. We find from the photograph which has been marked People's Exhibit 11 and from the testimony of the police officers that the packages are there, one in the chair, one on the seat. My recollection of the testimony concerning the contents of those packages, particularly one of them, was some corn in one, and I believe the [fol. 629] officer said butter and a can of something in the other. From those physical facts we can deduct that Mrs. Blauvelt would be met right at the door; she did not have an opportunity to get very far in the apartment; this thing happened simultaneously with her being right there at the entrance to the apartment. We find the packages are not in the kitchen. This thing happened quickly. We find the purse is open, the small coin purse is open. We find that the rings are gone. All of those physical facts with reference to the packages indicate that this attack occurred on her simultaneously with her coming into the door. That is a reasonable deduction from the testimony.

Now, let us pass to the testimony of Mr. Brennan, who testified here as to the conversations he had with the defendant. He testified yesterday, but I am going to read to you some of that testimony. You recall Mr. Brennan testified where he first saw the defendant, about talking to the defendant and asking him where he lived, about giving

him one address and then he gave another address, and he finally located, after a few days, the correct address of the defendant. He testified that on the 24th, I believe it was, of August, that this defendant, himself and Mr. Wiseman were in an automobile, and they were in the vicinity of Eighth and Catalina. At page 447 Mr. Brennan says, in response to this question: "Q—What happened when you got at Eighth and Catalina? A—At Eighth and Catalina I [fol. 630] stated to the defendant, I said, 'Have you ever been on this street? Are you acquainted on this street?' He said, 'What street is this?' I said, 'This is Eighth and Catalina.' I said, 'I am speaking about the apartment house at 744 South Catalina. Was you over at that apartment house?' He said, 'I wasn't.' Sgt. Wiseman further asked him if he had ever worked there as a janitor or had any acquaintance there, and he said he had not, that he had never been on that street, nor had he ever been on Catalina Street. I further asked him if—if on his way—if he lived on the east side, I said, 'If on your way to Beverly Hills to work, didn't you have occasion to cross Catalina Street?' 'Well,' he said, 'I might have crossed it but,' he said, 'if I did, I don't know.'"

The officer then testified that they went down to the other address, 855 East 28th Street, Mr. Wiseman got out of the car, and he had some conversation about the half brother or some relative by the name of Rose, who died and was buried from the People's Funeral Parlors, and a conversation with reference to other matters, and said then, when he got back to the station, the defendant with reference to telling about the funeral parlor, made this statement to him, reading from page 449: " 'I made one mistake. I told you my brother—my stepbrother's name,' and he said, 'You will go to the funeral parlors and find out all about my relations, anyway, so I might just as well [fol. 631] tell you the fact,' but he didn't tell us where he lived—he didn't tell us where he lived nor did he tell us where his relations lived. Then we went up stairs into the Detective Bureau, and at that time I asked the defendant if he was ready to tell us the whole story, and he said, 'I haven't got anything to say,' so I then told him that in the apartment at 744 South Catalina that we had found fingerprints in the apartment that corresponded with his, and that they were his fingerprints and he must have put them there if they were his prints. 'Well,' he said, 'I never

was in that apartment, and they are not my prints, and if they correspond to my prints somebody else put them there, because I was not in that apartment.' I said to him, I said, 'Well, you must have been in the apartment because there isn't anyone else could put your prints in there but yourself and,' I said 'they are definitely your prints.' He said, 'No, they are not my prints, because,' he said, 'if they look like mine,' he said, 'somebody else put them there.' I then went over and got the door, I think it is People's Exhibit 6— Q—6, the one here in evidence. A—People's Exhibit 6 in evidence, and I took the door out of my locker and I took the door and I sat it down in front of him, and I pointed out the prints to him on the door, and I said, 'Those are your prints,' and he said, 'No, they are not my prints at all.' I set the door down, and at this time Sgt. Wiseman showed the defendant the picture—I [fol. 632] know it is in evidence but I don't know what number it is, it is a picture of the kitchen showing the garbage disposal door. Q—I presume it was a smaller size than the one introduced in evidence here? A—It is a small picture; not the enlarged picture, but a small one. Q—A smaller size of People's Exhibit No. 18, is that correct, this one here? A—That is correct. This picture here, Sgt. Wiseman showed this picture to the defendant and pointed out this garbage disposal door here, and he said, 'That is how you got into that apartment, you went through the garbage disposal door, that is how you got into the apartment to burglarize it.' He said, 'Well, that is not so, I was not in the apartment.' The defendant said, 'Well, when was this murder, anyway?' 'Well,' I said, 'you should know that better than anybody else,' I said, 'you was present.' He said, 'I was not', that was his answer."

He goes on and describes about showing the defendant pictures of Mrs. Blauvelt and asking him if he had ever seen her before, and the defendant refused to look at them. This is page 452. "I said, 'What's the matter, can't you stand it?' He said, 'I don't like to look at dead people.' That was his answer to it. Q—You started to say he asked something about what day it happened on. Did you tell him when it happened? A—Yes, Sgt. Wiseman said, after I had said to him, 'Well, you should know,' Sgt. Wiseman [fol. 633] then spoke up and he said, 'Well, as far as we can figure it out, it happened on July 24th some time in the afternoon.' The defendant says, 'Well, what day was

that?" Sgt. Wiseman said; 'That is on a Monday.' 'Well,' he said, 'I don't have to worry about Monday,' he said, 'because I will have my witnesses,' he says, 'and I can account for my Mondays,' he said, 'all summer, I know where I was, and when the time comes I will have my witnesses here to prove it.' "

Now, going over further, to age 458, we find this conversation transpires, I believe, on the date shown you: "Q—Did you have some conversation with him on the date of the 28th? A—We got him that morning, picked him up at the Central police station and brought him to Division 4. After he was arraigned in Division 4, on the way back to the elevators to take him upstairs to book him in to the County, the defendant stated—I said, 'Well,' I said, 'Dewey, you have to go stand trial for this anyway,' and he said, 'Well, that is all right.' He said, 'I will have my attorney and all my alibi witnesses there when the time comes.' "

What has happened? In one answer there he asks what day this happened on. The officer says, "You know what day it happened on." He replied it happened on the 24th, and he wants to know what day of the week it is, and he told him it was Monday. He said, "I know where I was Monday. [fol. 634] I will have my witnesses and I can prove it." Again he says, "I will have my attorney and all my alibi witnesses there when the time comes." Have you heard from the lips of the defendant or a single witness called by the defendant where he was other than in that apartment? If he had alibi witnesses that would testify, they would be up here testifying.

Counsel asked this question: "The defendant may or may not take the stand"—you remember that—"In the event he does not take the stand, will you view that in the light of the presumption of innocence?" You were asked this question by myself: If the court instructs you that you can consider the fact of the failure of the defendant to take the stand, his failure to explain or deny anything, if you would do that, and you said you would. Now, the defendant does not have to take the stand in any case. He didn't take it here. He did not call, however, any witnesses. He tells the officers, "I will have my alibi witnesses." Where are they? Where are they? You know what stopped him. Those fingerprints; those fingerprints. Not one single witness did they call to the stand. You heard yesterday, "The People rest," and the defendant said, "The defense

rests." I say, why didn't they have them? The reason is, fingerprints; powerful evidence. So far as this defendant is concerned, as I said before, he does not have to take the stand. But it would take about twenty or fifty horses to [fol. 635] keep someone off the stand if he was not afraid. He does not tell you. No. Now, one more thing and I will conclude.

You were advised by the court in his questions to you and by counsel, with reference to the question of penalty. Now, with reference to the question of penalty, the court will instruct you that that is a matter entirely for your determination, and it is just exactly that. There are types of first degree murder where the evidence clearly warrants the imposition of a life imprisonment penalty. You can clearly think back over what you have read in the papers and what you have heard with reference to certain types of cases where that is a proper verdict. There is no question about that. There are certain circumstances in mitigation; a killing occurs, say, in a fit of anger, or something like that, sudden provocation. That is one situation. But in determining this question of penalty, in determining whether or not you should give this defendant any mercy, I ask you to see from this evidence, from these photographs that we have put here in evidence, from this strangulation, this death by torture, this death that occurred during the perpetration of a burglary, how much mercy this defendant gave the deceased, Mrs. Blauvelt; and I ask you to give to him just exactly the same amount of mercy that he gave to Mrs. Blauvelt. I ask that, realizing that it is entirely for you to determine, and I want you to consider it and [fol. 636] consider it carefully.

In conclusion I will say that from the evidence in this case, presented here in court, and based solely on it, the defendant is guilty of murder and guilty of murder in the first degree.

I thank you for your kind and courteous attention during this entire trial, during my argument to you, and at the proper time I ask you to go out and do your duty, and have the moral courage to bring in the proper verdict.

The Court: You may proceed, Mr. Safier.

(Argument by Mr. Safier.)

The Court: We will take our recess at this time. Keep in mind the admonition heretofore given, not to talk about

the case or form or express any opinion. Return here at 1:45.

(Whereupon an adjournment was taken until 1:45 o'clock of the same day, Tuesday, November 21, 1944.)

[fol. 637] Tuesday, November 21, 1944; 1:45 o'clock P. M.

The Court: The record will show the jury; the defendant and counsel present. You may proceed.

(Argument by Mr. Safier.)

Mr. Roll: Ladies and gentlemen of the jury; I am going to take up some statements made by counsel here in his argument to you. I was making notes as we went along.

Counsel, in starting out, tells you about the presumption of innocence and the doctrines of reasonable doubt. He says that the defendant is clothed with the presumption of innocence. In so far as that statement is concerned, that is true. And the court will give you an instruction on the doctrine of reasonable doubt. I asked you at the time you were sworn in here to be jurors in the case—at the time you were answering questions, to take that instruction by its four corners, the whole of it, and consider the whole thing. I will say—this is a proper comment to make on it—that part of it which says if you have an abiding conviction of the truth of the charge you find the defendant guilty. Reasonable doubt is not a possible doubt or imaginary doubt, because everything relating to human affairs is subject to some imaginary or possible doubt. So I ask you to take that instruction in its entirety when you consider it and weigh it. It is true that not only this defendant but every [fol. 638] defendant is presumed to be innocent, and the doctrine of reasonable doubt applies; it applies at all stages of the case; starting with the time of arrest, the matter is brought down to the District Attorney's office, a complaint is filed and then it goes through a preliminary hearing, an information is filed, it goes through that, and comes up for trial in the Superior Court. And here we started out in this case with the defendant, as counsel says, clothed with the presumption of innocence. But as this testimony moved forward piece by piece, bit by bit, article by article, this testimony stripped this defendant of that presumption of innocence, and finally, at the conclusion of the People's

case, when he did not take the stand or did not put any witnesses on the stand, he stood here with that presumption removed, based on the evidence in this case.

Counsel comments on People's Exhibit No. 34. I said in my opening argument—I asked you to examine it—he said it was brought here for the purpose of inflaming you, prejudicing you against this defendant. That is not a true, is not a correct statement, and I challenge that statement. You recall when Mr. Brennan was on the stand I had him testify as to the condition of her garments, and that picture was brought here for the purpose of showing particularly the condition of the undergarment and the torn place in the undergarment, which you can see in the picture. And I want you to look at it for that purpose. You as [fol. 639] jurors have a right to see how the body of Mrs. Blauvelt was left there.

Counsel, in his argument to you, says—he used the words, “There are a lot of mysterious things in this case.” We have placed here, from the prosecution's standpoint, to use a slang expression, our cards on the table. We have brought exhibits in here, we have brought photographs in here, we have brought witnesses in here, we have shown you what our side of the case is. You have seen it. If there is any mystery that has occurred in this case, it is a mystery from the defense side of this case. Did the defense clear up any mystery? The answer to that is “No.”

Counsel comments on Mrs. Massey and on Miss Massey. We know from the testimony there in the record—counsel says that Miss Massey was out in the back yard that day. Well, the transcript indicates that she was in the basement in the morning washing, and that she did go out in the back yard on several occasions to hang clothes on the line; she was back and forth. That is in the morning. We also found out that she had her lunch with her mother up in the apartment. Naturally, they could not see everybody that came in and out of the apartment.

Then he talks about Mr. Frick. I just looked at the transcript when he was arguing. I could read it to you, but I am not going to take the time to do it. But Mr. Frick testified on the 24th, and he even gave you the apartment number—on the morning of the 24th he was in an apartment on the fourth floor around 9 o'clock in the morning for approximately forty-five minutes using a vacuum cleaner. You recall the testimony. I asked him

the type of vacuum cleaner and he said it was a Hoover vacuum cleaner. I asked if it was a large or small one and he gave you the answer to that, and I asked him with reference to the noise. That is the testimony in this case concerning those individuals and where they were.

Now, counsel asked you with reference to the watch; why these diamonds were missing and why wasn't the watch taken? Some of you ladies have diamonds, and probably have had them for a long time, but unless they are of an unusual nature, of such a type that they are easily describable—I have in the past known of some cases where a diamond expert has been put on the stand, given an unusual stone, one which is marked in catalogues, and they can with their instruments positively identify it. But you take an ordinary carat or carat and a half diamond that you get out of a setting, you, I nor no one else could ever identify that stone. That is one of the reasons that diamonds are easily disposed of by people who sell them.

We come to a watch. A watch is something different; somewhere on a watch is a number. Sure, they change the cases. But you look at your own watch, if you have a watch on here now, and you will see it not only has one [fol. 641] number, it has got numbers on the outside and numbers on the inside. It is much easier to peddle diamonds removed from a setting than it is a watch.

Counsel comments upon the testimony of Mrs. Vandiver, criticized her for not seeing the packages there. But place yourselves in the position of those two ladies, Mrs. Vandiver and Mrs. Massey, who came in there, went to that apartment there. Well, the photograph here of the room indicates the light is just inside the door, just around the corner. Their particular attention, as well as anyone's attention that went in there, would be directed merely to one object, and that is the person on the floor. Those women, unquestionably, were frightened. We know they never went back to the apartment. Even when the police came they gave them the passkey to the apartment to get in there. There is an answer in Mrs. Vandiver's testimony to the effect that her particular attention was directed to that.

Counsel wants to know what the napkin is doing in this case. You will recall, when the photograph was introduced here in evidence, it showed—and it is here; you can look at it—it showed under the shoes a napkin. He starts out

wanting to know what that object was and who put it there. Mr. Pinker was called to the stand to identify the napkin. We find that the napkin was under the shoes. That is what this object was. He is the one that brought [fol. 642] it up; I did not bring it up. He wanted to know what that object there was, and we showed it to him.

Counsel says he does not know who crawled through the disposal unit, and he made some other statements that were rather extraordinary in his argument. He even went so far as to say he did not want to touch that door, "because I might leave my prints on it," and then says, "I don't know whether it was taken off by some police officers or not." I say to you, members of the jury, that that statement was not justified by the evidence in this case; it is not borne out by the evidence in this case, and that it is not a fair statement to make from the facts in this case.

We know at the time Mr. Long got there where the door was. He testified where it was. We know when the fingerprint man got there where the door was. We know he was the one that put newspapers under it, and then counsel says he does not know whether the police officers moved that door or not. I think you know and I know from the evidence in this case that the defendant crawled in that apartment through that garbage disposal unit.

Then counsel says, if the defendant wasn't there, what has he got to tell you? He says, "If he wasn't there, what has he got to tell you? Well, there are a lot of things he could tell us. If he wasn't there, where was he? Where was he? Was he by himself or was he with somebody? Where are these alibi witnesses he talked about? He could [fol. 643] explain how his prints got on there, and he could explain what he was trying to do when he was selling or attempting to sell a diamond ring. He could have done that. Neither he nor witnesses did it. Those are matters which all have been testified to and are here in this case."

Now, counsel goes into some detail with reference to the testimony of Mr. Frick, and I commented on that a little while ago. He thought it funny Mr. Frick couldn't tell where the other garbage cans were. Counsel got one answer on cross examination—he said, "I will take you out and show you." You remember that. "I will take you out and show you."

Counsel wants to know why Osmon was here. He said, "I don't know what they brought him in here for." Let

us look at the testimony of Mrs. Vandiver, Volume 3, page 140, cross examination by defense counsel: "Q. Were you home on July 24th? A. I was. Q. All day? A. Practically. Q. Had you seen any peddlers in the building on July 24th? A. Any what? Q. Peddlers. A. I don't know whether you would call a solicitor for a newspaper a peddler or not, but one came to my door Tuesday night. Q. Soliciting newspapers? A. Los Angeles Examiner. Q. You say on Tuesday night— A. Yes. Q.—or Monday night? A. Tuesday. Q. I am referring to Monday, the 24th. A. Oh, no, not Monday. Q. You did not see anybody on Monday? A. No. Q. You did not see anybody soliciting for the news- [fol. 644] paper on Monday? A. No. Q. Now, this boy that came to solicit for the papers, was he a stranger to you? A. He was. Q. And you now say that that was on Tuesday? A. Yes. Q. Now, you remember testifying in this matter at the preliminary hearing, do you not? A. I do."

Then counsel takes the transcript here, lets her read it, and then reads it out loud. "Q. I will ask you to read your testimony on page 14, lines 24 to 26. Will you just read that to yourself? Have you read this, Mrs. Vandiver? A. Yes. Q. I will ask you if this question was asked you and if you gave this answer: 'Q. Do you have any peddlers call at the apartment? A. Well, Monday night I had a young boy soliciting for the paper, but that is all. Was that question asked of you and did you give that answer? A. Evidently I did.'"

I again say that that is a straw that was thrown in here to cast suspicion away from this defendant. We brought the young boy in here and put him on the stand so you could see him. Counsel wants to know what he was in here for. She was cross examined before he was ever brought in on that subject. He is the one that brought it up. That is the reason Mr. Osmon was brought in here. We were putting our cards on the table so you jurors could see them.

Now, counsel criticizes Mr. Ferguson with reference to several matters. In one breath he says he does not know [fol. 645] whether the prints were on the door out there or not, and in the second breath he says Mr. Ferguson dusted the door and the glasses and the articles of furniture there in the front room, and that he did not try for any prints on the doorknob. Well, you heard the fingerprint man here testify in order to get fairly clear prints you have to

have a fairly clean surface; that you cannot get prints that are of any value off of one where there are other prints on them, others superimposed. Take the doorknob there, like the one right there on the door. I think I know enough from the fingerprint testimony that I heard here in the record that if you would try to get a print off that doorknob right now you could not do it. There is no use trying to do the impossible. He got prints, he got six prints, and he got them out there at the time.

Mr. Safer: Mr. Roll, I don't like to interrupt you, but I don't believe I said anything about the doorknob.

The Court: You mentioned the door.

Mr. Roll: You mentioned the door.

The Court: Without specifying what part of the door, and doors and doorknobs. When you refer to the entire door you mean all parts of it. I think the argument is permissible.

Mr. Roll: In reference to this statement made by counsel—he said, “I don't know the significance of the rings.” “I don't know.” Well, I think you know and I [fol. 646] know the significance of the rings. Counsel has been sitting here during this trial, and he has heard these various people testify that this lady wore the rings. He said he does not know the significance of the testimony of Mrs. Turner, the lady that was from the bookstore at Bullock's. He didn't know what she was brought in here to prove. She was brought in to prove at 11:45 the same day that Mrs. Blauvelt was killed, she was wearing these diamond rings. We put them on her person at that time. And that is what these other people were brought in here for, to show ownership, possession and custom in wearing them, and to show that when she was found that the rings were missing.

Now, counsel comments on the testimony of Mrs. Turner. He makes this statement: “I do not know whether she was in condition to know what the conversation was. She said she had had five drinks of beer.” Let us see what the testimony is in the case: “Q. And you were sitting at the bar, were you? A. Yes, sir. Q. Were you drinking? A. I had a few glasses of beer but I had not even been served beer at the time that I heard the conversation. I had just come in.”

Now, is that a fair statement to make in reference to the lady, when he says, “I don't know whether she was in

condition to know what the conversation was"? And then counsel goes on to say she did not know how he was dressed, [fol. 647] and he mentioned a mustache, and then went on to read the testimony, but he did not read one question which was, I think, quite pertinent. "Q. Are you able to say as to that particular evening that you had that conversation whether Mr. Adamson was wearing a mustache or not? A. He probably was. I can remember that he has had a mustache."

Then he read this question: "The Court: Can you tell, looking at him now, whether he has a mustache from where you are looking at him? A. I really never observed the man enough; I was never interested."

Counsel does not read this one to you: "The Court: Look at him right now and tell me whether he has a mustache right now or not. A. It doesn't look like it from here."

I may be getting bald-headed, but I still, fortunately, have good vision. I have what is known as 20-20 vision, and I would have to look quite closely at the defendant to determine whether or not he had a mustache. Some people call things mustaches when they are not. I think, maybe, I can qualify as an expert on mustaches.

Now, coming to the question of fingerprints. Counsel did not spend a great deal of time on the fingerprints. He made several comments. He said both of the men who testified concerning the fingerprints are police officers. Well, is there anything wrong with being a police officer? One [fol. 648] of these men was appointed as the court's expert. Did counsel dispute those fingerprints? Did he bring in his own experts? If he was not satisfied with those men he could bring in his own; ask the court to appoint somebody else. He knows as well as you know and I know that in so far as any reputable expert is concerned, there would not be any disagreement with reference to these fingerprints. There are six of them there. They were given careful consideration. If you remember Mr. Rogers' testimony, he even went so far as to say that when a fingerprint man was going to testify in court it was not the individual judgment of that fingerprint man but they brought somebody else to look at it and check their work. That is how careful they are. I have seen witnesses go on the stand before, not only experts but other people, where they have been asked the question, "Have you ever made a mistake?" Well, there is

no human living being that has not made a mistake at some time or another. Counsel probably has got an eraser on the end of his pencil right there; that is the reason they make erasers, because we make mistakes. That was an honest and that was a true answer when those gentlemen said that they had made mistakes. But there wasn't any mistake made in this case.

Counsel says that he could not see the similarity when Mr. Rogers was testifying. Well, I ask you, as just ordinary lay people, to take these enlarged prints, follow [fol. 649] through all the points of identity, bearing in mind the testimony here, and I believe that you will come to exactly the same conclusion that Mr. Rogers did, and Mr. Larbaig did, that conclusion being the prints on the door are the prints of the defendant.

Counsel said, after discussing the testimony of those two gentlemen, that there were two opportunities for the defendant to have placed the prints on the door: One, at the station; two, at the trial here. Then he follows it up by saying that if there are two reasonable interpretations to be placed on the evidence, two reasonable interpretations to be placed on the evidence, one pointing to guilty and one pointing to innocence, you are to adopt the one pointing to innocence. But he does not tell you that that particular rule only applies when there are two reasonable interpretations. So, let us take what he says and apply that as he wants us to apply it, to the fingerprints on the door. Is it a reasonable interpretation of this evidence because the defendant may have had an opportunity to place his fingerprints on the door, to say that those fingerprints were placed on the door by the defendant there at the preliminary hearing when Mr. Wiseman and Mr. Brennan were talking to him? Now, the defendant does not say, from the witness stand here, "I put my prints on the door there at the preliminary"; and he does not say, "I put my prints on there at [fol. 650] the police station." And in making that statement he asked you to utterly disregard the testimony of the officer who took the prints out there at the scene. So, I accept his challenge to us and say: Do apply that rule and you will find there is a reasonable interpretation and an unreasonable one. The reasonable one points to guilt.

The Court: I think we will take our recess, Mr. Roll. It is apparent we cannot conclude shortly. We will take

a little recess at this time. Keep in mind not to talk about the case or form or express any opinion.

(Recess.)

The Court: The record will show the jury, counsel and the defendant present. You may proceed.

Mr. Roll: Going back to the testimony of the experts concerning the fingerprints on the door. You will recall the testimony of Mr. Ferguson. We placed in evidence here what he called lift prints. Now, taking all of counsel's argument, he has not explained the lift prints which Mr. Ferguson says that he took there at the scene. Another thing, we find from the testimony of Mr. Ferguson that he put this Scotch tape over those prints out there at the time for the purpose of preserving them, and they were there on that door then and they are on the door at the present time with that Scotch tape on there. I do not know how you could put those prints on there in the location they are.

Now, with reference to the testimony of Mr. Larbaig and [fol. 651] Mr. Rogers. If there was ever any evidence of any case in the Superior Court where they have testified, where there was any mistake made, any dispute concerning their testimony, counsel would have had that record here in court and cross examined about it. He had nothing, nothing whatsoever, concerning it here in this case. Their testimony is here in the record undisputed.

Counsel talks about the testimony of Mrs. May with reference to the time—I am going to read it to you. This is from page 319, cross examination: "Q. Can you give us an approximation of the time that elapsed between the time you heard the key in the lock and the door close and the footsteps? A. No, I cannot; I haven't any idea what time elapsed. Q. Well, would it be a matter of five or ten minutes, or a matter of an hour or two hours? A. I don't know; I don't remember."

I cannot see how you could fix any definite time when her testimony throughout the entire transcript was along that situation, so far as time is concerned. We know this from the testimony of Mrs. May, that she said, "What do you want of me?" That voice that was described as a strained and frightened voice, in the testimony here. Unquestionably, in close proximity to the door, she was grabbed. What happened to the key, whether she had got the key out of

the lock, I don't know. They key, after the door shut, may have remained in the lock. The defendant may have [fol. 652] gone out later and taken the key out of the lock. It may have been the sound that the witness heard of the key coming out of the lock and the defendant after that going down the stairs.

Counsel says that there is one other point that I neglected to mention with reference to the prints, when counsel tells of the probability or possibility of the defendant having touched the door afterwards. Well, look at it from the standpoint of reason. In the first place, the defendant is told by the officers that this is the door, these are his prints on the door. The testimony in this case is uncontradicted. Do you think he would be silly enough, foolish enough, to go ahead and handle that door, when he knew from what the officers had told him, that that door and those prints were going to be used against him? Does that seem reasonable?

Counsel says to you that the defendant was not lying to Mr. Brennan. Mr. Brennan said—I read you his testimony this morning, and I won't read it again—but he testified that on this date of the 24th of August he and Mr. Wiseman were in the car and they came to Eighth and Catalina, and the defendant was asked if he had ever been in the apartment at 744 South Catalina Street, and the defendant said, "No, I have never been in that apartment." Mr. Wiseman asked him if he had ever worked there, and he said, "No, I have never worked there." Now, we know [fol. 653] from the fingerprints that he certainly was not telling the truth when he made that statement. Counsel says that he told the truth when he said that he may have passed Eighth and Catalina. Well, do you recall that Mr. Brennan said that one of the addresses the defendant gave was 914 North Beverly, and in this conversation he asked him if he may not have passed across Catalina Street in going to 911 North Beverly Drive and the defendant said, "Yes, I might have." Now, that is the way that situation came in. I say that he did not tell Mr. Brennan the truth when the opportunity was presented to him, when he was told that his prints were on the door. You recall what I read to you this morning, what the testimony was.

You recall in your examination as jurors that counsel was asking some questions with reference to whether or not

the defendant would or would not testify. Some place along the line there there was an objection made and the court said, "If you will reframe your question so that you place it in the position of a determination of whether he should or should not testify, the question would be proper." The question was reframed and you were all permitted to answer. I think you all remember that.

Now, counsel tries to lift from the defendant and place on himself the reason for the defendant not getting on the stand. He says, "Put the blame on me." That is what he told you. Well, I again repeat the statement I made this [fol. 654] morning: that this defendant had the right to take the witness stand; it is a privilege afforded to him, and he did not do it. You can consider that with all the testimony in this case, and I ask you to consider it.

In conclusion, I am going to just make this one statement to you: Counsel asked you to find this defendant not guilty. But does the defendant get on the stand and say, under oath, "I am not guilty"? Not one word from him, and not one word from a single witness. I leave the case in your hands.

[fol. 655] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 656] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

JUDGE'S CERTIFICATE

I, Charles W. Fricke, Judge of the Superior Court of the State of California, in and for the County of Los Angeles, and being the judge who presided at the trial of the above entitled criminal cause, do hereby certify that the objections made to the supplemental transcript herein have been heard and determined and the same is now corrected in accordance with such determination, within the time allowed by law; and the same is now, therefore, approved by me this 30th day of April, 1944.

Chas. W. Fricke, Trial Judge.

[fol. 657] IN SUPERIOR COURT OF LOS ANGELES COUNTY

[Title omitted]

JUDGE'S CERTIFICATE

I, Charles W. Fricke, Judge of the Superior Court of the State of California, in and for the County of Los Angeles, and being the judge who presided at the trial of the above entitled criminal cause, do hereby certify that no objection has been made to the within supplemental transcript by either the defendant or his attorney, or the District Attorney, within the time allowed by law; and the same is now, therefore, approved by me this 30 day of April, 1945.

Chas. W. Fricke, Trial Judge.

[fol. 658] Due service of the within and receipt of a copy hereby admitted this 17th day of April, 1945.

Fred N. Howser, District Attorney, by James Gibbons, Deputy, Attorney for Plaintiff and Respondent.

Due service of the within and receipt of a copy hereby admitted this 6 day of April, 1945.

Morris Lavine, Milton B. Safier, by Milton B. Safier, Attorney for Defendant and Appellant.

Due service of the within and receipt of a copy hereby admitted this 2d day of May, 1945.

Robert W. Kenny, Attorney General, by Frank Richards, Deputy.

[Tol. 659]

[File endorsement omitted]

IN THE SUPREME COURT OF CALIFORNIA

In Bank

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and
Respondent,

VS.

ADMIRAL DEWEY ADAMSON, Defendant and Appellant

OPINION—Filed January 4, 1946

Defendant was charged with murder in count I of an information by the District Attorney of Los Angeles County; and in counts II, III, IV, and V, with four separate crimes of burglary. He pleaded not guilty and was tried before a jury on counts I and II. He was tried in a separate consolidated case on counts III, IV, and V. He admitted two prior felony convictions and was adjudged an habitual criminal. The defendant did not testify and produced no witnesses. He was found guilty on count I of murder in the first degree, without recommendation, and guilty on count II of burglary in the first degree. This appeal is automatic from the judgment on count I (Penal Code, sec. 1239). Defendant also appeals from the judgment on the burglary count and from an order denying his motion for new trial.

The body of Stella Blauvelt, a widow 64 years of age, [Tol. 660] was found on the floor of her Los Angeles apartment on July 25, 1944. The evidence indicated that she died on the afternoon of the preceding day. The body was found with the face upward covered with two bloodstained pillows. A lamp cord was wrapped tightly around the neck three times and tied in a knot. The medical testimony was that death was caused by strangulation. Bruises on the face and hands indicated that the deceased had been severely beaten before her death.

The defendant does not contend that the evidence does not justify a finding that murder in the first degree had been committed. (Penal Code, sec. 189.) The sole contention of fact that he makes is that the evidence is not sufficient to identify him as the perpetrator. The strongest circumstance tending to so identify the defendant was the

Smudging of six fingerprints, each identified by expert testimony as that of the defendant, spread over the surface of the inner door to the garbage compartment of the kitchen of the deceased's apartment. (See 2 Wigmore, Evidence, 3rd ed. 389.) After the murder, this door was found unhinged, leaning against the kitchen sink. Counsel for defendant questioned witnesses as to the possibility of defendant's fingerprints being forged, but the record does not indicate that any evidence to that effect was uncovered. The theory of the prosecution was that the murderer gained his entrance through the garbage compartment, found the inner door thereof latched from the kitchen side, and forced the door from its hinges. It was established that defendant [fol. 661] could have entered through the garbage compartment by having a man about his size do so. The fact that the key to the apartment could not be found after search and the testimony of a neighboring tenant as to sounds heard indicate that the murderer left the apartment through the door thereof and made his exit from the building down a rear stairway.

The tops of three women's stockings identified as having been taken from defendant's room were admitted in evidence. One of the stocking tops was found on a dresser, the other two in a drawer of the dresser among other articles of apparel. The stocking parts were not all of the same color. At the end of each part, away from what was formerly the top of the stocking, a knot or knots were tied. When the body of the deceased was found, it did not have on any shoes or stockings. There was evidence that on the day of the murder deceased had been wearing stockings. The lower part of a silk stocking with the top part torn off was found lying on the floor under the body. No part of the other stocking was found. There were other stockings in the apartment, some hanging in the kitchen and some in drawers in a dressing alcove, but no other parts of stockings were found. None of the stocking tops from defendant's room matched with the bottom part of the stocking found under the body.

In reply to questions by the police, defendant denied that he resided or had ever been at the apartment house identified by testimony as his residence. At different times he gave two other addresses as his residence. When shown a [fol. 662] picture of the murdered victim, he refused to look at it, stating that he did not like to look at dead people.

The theory of the prosecution was that the motive of the murder was burglary. Testimony revealed that the deceased was in the habit of wearing rings with large-sized diamonds and that she was wearing them on the day of the murder. The rings were not on the body and search has failed to uncover them. A witness, positively identifying the defendant, testified that at some time between the 10th and 14th of August, 1944, she overheard defendant ask an unidentified person whether he was interested in buying a diamond ring.

From the foregoing evidence a reasonable jury could conclude that beyond a reasonable doubt defendant committed the murder and burglary. (See *People v. Ramirez*, 113 Cal. App. 204; 2 Wigmore, *supra*, 389.) Testimony that the screws were still in the hinges of the door when it was found and that fragments of wood that appeared to have come from the screw holes were clinging to them, indicating a forced removal, served to discount the possibilities that at some previous date the door had been taken from the apartment for some unknown reason and at that time handled by the defendant, or that defendant had handled the door during some earlier visit to the deceased's apartment. Testimony to the effect that the garbage pail was not in its customary place when found after the murder further tended to substantiate the prosecution's theory as to time and mode of entrance.

Defendant contends that error was committed in the admission of the testimony of part of a conversation in which he asked an unidentified person whether the latter was interested in purchasing a diamond ring. Conceding that this evidence, though hearsay, was admissible in so far as the hearsay rule is concerned as an admission (*People v. Ferdinand*, 194 Cal. 555, 568; *People v. Britton*, 6 Cal. 2d 10, 13; *People v. Chan Chaun*, 41 Cal. App. 2d 586, 593), defendant contends that it was irrelevant. The rule is well settled that a witness may testify to part of a conversation if that is all that he heard and it appears to be intelligible. (*People v. Luis*, 158 Cal. 185, 194; *People v. Ramos*, 3 Cal. 2d 269, 272; *People v. Tarbox*, 15 Cal. 57, 64; *People v. Daniels*, 105 Cal. 262, 285; *People v. Montgomery*, 47 Cal. App. 2d 1, 19.) *People v. Rabalete*, 28 Cal. App. 2d 480, 485, is not contrary to this rule. The fragment of the sentence there held inadmissible, "242 to

show", was held to create merely a suspicion of the meaning of the entire sentence. (People v. Jacquaino, 63 Cal. App. 2d 390, 393-4.) The part of the conversation here admitted, however, in view of the evidence indicating that the motive of the murderer was the theft of diamonds, tended to identify defendant as the perpetrator.

To be admissible, evidence must tend to prove a material issue in the light of human experience. (See 1 Wigmore, supra, 407.) The stocking tops found in defendant's room were relevant to identify defendant because their presence on his dresser and in a drawer thereof among other articles [fol. 664] of wearing apparel with a knot or knots tied in the end away from what was formerly the top of the stocking indicates that defendant had some use for women's stocking tops. This interest in women's stocking tops is a circumstance that tends to identify defendant as the person who removed the stockings from the victim and took away the top of one and the whole of the other. Although the presence of the stocking tops in defendant's room was not by itself sufficient to identify defendant as the criminal, it constituted a logical link in the chain of evidence. (People v. Graves, 137 Cal. App. 1; People v. Billings, 34 Cal. App. 549, 553.) Evidence that tends to throw light on a fact in dispute may be admitted. The weight to be given such evidence will be determined by the jury. (People v. Mooney, 177 Cal. 642, 655; People v. Graves, supra; People v. Billings, supra; see 7 McKinney's Dig. 54.) Codification of this rule as applied to demonstrative evidence is found in section 1954 of the Code of Civil Procedure: "Whenever an object, cognizable by the senses, has such a relation to the fact in dispute as to afford reasonable grounds of belief respecting it, or to make an item in the sum of the evidence, such object may be exhibited to the jury . . . The admission of such evidence must be regulated by the sound discretion of the court."

It is contended that the admission of the stocking tops deprived defendant of a fair trial and therefore denied him due process of law. Defendant states that their admission could serve no purpose except to create prejudice against [fol. 665] him as a Negro by the implication of a fetish or sexual degeneracy. No implication of either was made by the prosecutor in his brief treatment of the evidence in oral argument. Moreover, except in rare cases of abuse, demon-

strative evidence that tends to prove a material issue or clarify the circumstances of the crime is admissible despite its prejudicial tendency. (People v. Antony, 146 Cal. 124; People v. Hawes, 98 Cal. 648; People v. Haydon, 18 Cal. App. 543; see People v. Colvin, 118 Cal. 349, 351; see People v. Bolton, 215 Cal. 12, 20; 8 Cal. Jur. 140 et seq; *ibid.* 76, sec. 177; 4 Wigmore, *supra*, 251, 254; 21 Mich. L. Rev. 935; 31 Yale L. J. 107.)

The prosecuting attorney commented repeatedly on the failure of the defendant to take the stand. By statute or by decision, the majority of jurisdictions prohibit such comment. (See 8 Wigmore, *supra*, 412; 31 Mich. L. Rev. 40.) In 1934, however, following studies made by the American Law Institute and the American Bar Association (9 Proc. Am. L. Inst. 202-218; 56 Reports A. B. A. 137-152), Article I, section 13 of the California Constitution was amended to provide that " . . . in any criminal case, whether the defendant testifies or not, his failure to explain or to deny by his testimony any evidence or facts in the case against him may be commented upon by the court and by counsel, and may be considered by the court or the jury" Similar provisions are found in section 1323 of the Penal Code. Article I, section 13 of the California Constitution also provides that "No person shall be . . . compelled, in any criminal case, to be a witness against himself" It is contended that this provision and the [fol. 666] 1934 amendment are inconsistent and that therefore both cannot be effective. Before the 1934 amendment, it was the rule in California that commenting on the defendant's failure to take the stand or advising the jury that it could draw inferences unfavorable to him on that account violated the privilege against self-incrimination. (People v. Tyler, 36 Cal. 522.) The 1934 amendment limited but did not abolish this privilege. A person still cannot be compelled in any criminal case "to be a witness against himself," but the privilege no longer extends so far as to prevent comment upon or consideration of his failure to explain or deny evidence against him. The practical effect of the 1934 amendment may be that many defendants who otherwise would not take the stand will feel compelled to do so to avoid the adverse effects of the comments and consideration authorized by the amendment. (See 26 Yale L. J. 464, 466.) Such a coercive effect, however, is sanctioned

by the amendment, which, being later in time, controls provisions adopted earlier.

It is contended that in so far as it limits the privilege against self-incrimination, the 1934 amendment to the Constitution and section 1323 of the Penal Code violate the due process clause of the Fourteenth Amendment to the United States Constitution. Although there has been much discussion as to the wisdom of allowing comment upon and consideration of a defendant's failure to deny or explain incriminating evidence (see 8 Wigmore, *supra*, 419; 31 Mich. L. Rev. 40; *Ibid*, 226; 22 Cornell L. Q. 392; 26 Yale [fol. 667] L. J. 464; 9 Proc. Am. L. Inst. 202-218; 56 Reports of A. B. A. 137-152 3 Jour. of Crim. Law and Criminology, 770; 13 *ibid*. 292; 26 *ibid*. 180), the freedom from federal constitutional limitations of state provisions allowing such comment and consideration was settled in *Twining v. New Jersey*, 211 U. S. 78. (See 31 Mich. L. Rev. 40, 45; *ibid*. at 228; 22 Cornell L. Q. 392, 393; 8 Wigmore, *supra*, 414, sec. 2272, n. 2.) In that case the defendant, who was convicted in the courts of New Jersey, had not testified in his own behalf. The trial court, in accordance with New Jersey decisions, commented on this fact. The court decided that such comment did not constitute a denial of due process, holding that the due process clause does not protect a person against self-incrimination. The fact that the comment in the *Twining* case was by the court rather than the prosecutor is immaterial. (*State v. Ferguson*, 226 Ia. 316; see 8 Wigmore, *supra*, 1943 Supp., 30.) *Twining v. New Jersey* also held that the privilege against self-incrimination is not protected by the privileges and immunities clause of the Fourteenth Amendment.

It is clear from the terms of the constitutional provision that the consideration and comment authorized relates, not to the defendant's failure to take the stand, but to "his failure to explain or deny by his testimony any evidence or facts in the case against him" whether he testifies or not. The constitutional provision thus makes applicable to criminal cases in which the defendant does not testify, the established rule that the failure to produce evidence that is within [fol. 668] the power of a party to produce does not affect in some indefinite manner the ultimate issues raised by the pleadings, but relates specifically to the unproduced evidence in question by indicating that this evidence would be adverse. (*State v. Callahan*, 76 N. J. L. 426; *State v. Sgro*,

180 N. J. L. 528; McDonald v. Smith, 139 Mich. 211, 224; Mooney v. Davis, 75 Mich. 188, 193; Harrison v. Harrison, 124 Ia. 525, 526; see Cal. C. C. P. secs. 1963 (5), 2061 (6), (7); 2 Wigmore, *supra*, 162; *ibid.* 176; *ibid.* 179.) "All evidence is to be weighed according to the proof which it was in the power of one side to have produced and in the power of the other to contradict." (Mansfield, C. J. in Blatch v. Archer, Cowp. 66, see 2 Wigmore, *supra*, 162 et seq., and cases there cited. The Code of Civil Procedure codifies this rule by providing that the jury is to be instructed by the court on all proper occasions: "6. That evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict;" (Code Civ. Proc., sec. 2061(6)), and that it is to be presumed "that evidence wilfully suppressed would be adverse if produced;" (*Ibid.* sec. 1963(5).) The basis in common experience for this rule as applied to criminal cases has been set forth in State v. Grebe, 17 Kan. 458: "The instinct of self-preservation impels one in peril of the penitentiary to produce whatever testimony he may have to deliver him from such peril. Every man will do what he can to shield himself from the disgrace of a conviction of crime, and the burden of punishment. We all know this. We all expect it. Whenever therefore a fact is shown which tends to prove crime upon a defendant, and any explanation of such fact is in the nature of the case peculiarly within his knowledge and reach, a failure to offer an explanation must tend to create a belief that none exists." Therefore the failure of the defendant to deny or explain evidence presented against him, when it is in his power to do so, may be considered by the jury as tending to indicate the truth of such evidence, and as indicating that among the inferences that may reasonably be drawn therefrom, those unfavorable to the defendant are the more probable. Respondent cites People v. Dukes, 16 Cal. App. 2d 105, 109-110; People v. Pianezzi, 42 Cal. App. 2d 265, 267, 269; and People v. Dozier, 35 Cal. App. 2d 49, 59-60, as holding that failure to testify directly affects the ultimate issue of guilt by raising an "inference or presumption of guilt." The instruction refused in the Dukes case was in part to the effect that the members of the jury were "not to consider or permit [themselves] in anywise to be influenced by the fact that the defendant has not seen fit to

offer himself as a witness before you." A similar instruction was refused in the Pianezzi case. The instruction refused in the Dozier case provided that failure to deny or explain testimony "should not create a prejudice or unfavorable inference in the minds of the jury; no inference can be drawn against the defendant from his failure to testify." In these cases the court was clearly correct in [fol. 670] holding that the instruction would destroy the effect of the 1934 amendment.

The failure of the accused to testify becomes significant because of the presence of evidence that he might "explain or deny by his testimony" (Art. I, sec. 13, Cal. Const.), for it may be inferred that if he had an explanation he would have given it, or that if the evidence were false he would have denied it. (*State v. Grebe*, supra; *Mooney v. Davis*, supra, 193; see Code Civ. Proc., secs. 1963(5), (6), 2061 (6), (7).) No such inference may be drawn, however, if it appears from the evidence that defendant has no knowledge of the facts with respect to which evidence has been admitted against him, for it is not within his "power" (Code Civ. Proc., sec. 2061(6)) to explain or deny such evidence. (*Ibid.* sec. 1963(5); *Parker v. State*, 61 N. J. L. 308; *Caminetti v. United States*, 242 U. S. 470, 494, 495; *Blatch v. Archer*, supra; *R. v. Burdett*, 4 B. & Ald. 122; see *People v. Albertson*, 23 Cal. 2d 550, 585.)

It was never intended, of course, that the 1934 constitutional amendment should relieve the prosecution of the burden of establishing guilt beyond a reasonable doubt by admissible evidence supporting each element of the crime. (*People v. Sawaya*, 46 Cal. App. 2d 466, 471; *State v. Callahan*, supra; see Bruce, (One of the draftsmen of the American Bar Association resolution that preceded the adoption of the California provisions), *The Right to Comment on the Failure of the Defendant to Testify*, 31 Mich. L. Rev. 226, 229, 231; 2 Wigmore, supra, 179; 4 Cleveland Bar Journal 12; 3 Jour. of Crim. Law and Criminology 770, 774.) Nor can the defendant's silence be regarded [fol. 671] as a confession. In so far as *People v. Pianezzi*, 42 Cal. App. 2d 265, 268, holds that the prosecutor may properly characterize the defendant's failure to testify as tantamount to a confession, it is disapproved.

Of its own volition the trial court gave the following as the only instruction with respect to the right of the prosecution to comment on and of the jury to consider defend-

ant's failure to explain or deny the evidence against him: "It is the right of court and counsel to comment on the failure of defendant to explain or deny any evidence against him * * *; yet the jurors are the exclusive judges of all questions of fact submitted to them and of the credibility of witnesses." In stating merely that court and counsel may comment on defendant's failure to explain or deny incriminating evidence, the instruction encompasses a rule of concern solely to the court. Respondent cites *People v. McKenna*, 11 Cal. 2d 327, 336, and *People v. Boggs*, 12 Cal. 2d 27, 35, as upholding the instruction given. In the McKenna case, no comment was made on the failure of the defendant to testify, and it was held that an instruction in the general language of the Constitution was not prejudicial. The Boggs case likewise rested merely on the ground that the instruction there given was not prejudicial. The jury, however, is concerned with the scope and nature of the consideration that it may give defendant's failure to explain or deny incriminating evidence, and in the present case should have been instructed that the defendant's failure to deny or explain evidence presented against him does not create a presumption or warrant an inference of guilt, but should be considered only in relation to evidence that he fails to explain or deny; and that if it appears from the evidence that defendant could reasonably be expected to explain or deny evidence presented against him, the jury may consider his failure to do so as tending to indicate the truth of such evidence and as indicating that among the inferences that may reasonably be drawn therefrom, those unfavorable to the defendant are the more probable.

The failure to give such an instruction was not prejudicial, however. It appears from the evidence that defendant could reasonably be expected to explain or deny all evidence presented. Thus the jury could infer from the evidence concerning the fingerprints either that defendant handled the garbage compartment door in the perpetration of the burglary and murder or that they were placed there at some other time. The defendant could reasonably be expected to know whether or not he had handled the garbage door and if so, on what occasion. The evidence that he solicited someone to buy a diamond ring is susceptible of an inference either that he was attempting to sell the victim's rings or rings that had no connection

with the crime. The defendant could reasonably be expected to know whether or not he had done such soliciting and, if so, with regard to what rings. His failure to explain or deny this evidence by his testimony could have been considered by the jury as indicating that the evidence was true and that the inferences unfavorable to the defendant were the more probable.

The defendant contends that the court erred in refusing the following proposed instructions: "You are instructed that it is the policy of the law to zealously protect the innocent. In a criminal case the law clothes the defendant [fol. 673] with a presumption of innocence and casts upon the people the burden of proving guilt beyond a reasonable doubt. The defendant is not obliged to prove his innocence or offer any proof thereon; and if the defendant elects not to take the witness stand but to rest upon what he believes to be the weakness or insufficiency of the People's case, he has a right to so do and no inference or presumption of guilt arises from his failure to take the witness stand." "You are instructed that the burden of proof rests on the prosecution and the failure of the defendant to take the stand raises no presumption or inference of guilt." There was no error in the refusal to give these instructions. The court gave ample general instructions elsewhere on the presumption of innocence and burden of proof. The bare statement, moreover, that "the failure of the defendant to take the stand raises no presumption or inference of guilt," is deficient and misleading in that it fails to point out what consideration can be given the circumstance. The court may properly refuse to give a proposed instruction that is misleading because it only partially states the law.

The following proposed instruction, however, should have been given: "You are instructed that the fact that the prosecutor has a right to comment on the failure of the defendant to take the stand does not relieve the prosecution of the burden of establishing guilt beyond a reasonable doubt and by competent and legal evidence." Although a general instruction on burden of proof had been given, because of the likelihood of misconstruction of the weight and effect to be given the circumstance, the defendant was entitled to a specific instruction that failure to deny or [fol. 674, explain incriminating evidence does not impose upon him the burden of persuading the jury of his innocence.

In view, however, of the fact that the jury was instructed thoroughly on burden of proof generally, it is improbable that the verdict would have been different had the instruction been given.

The following instruction was also proposed: "You are instructed that the right of the prosecution to comment on the failure of the defendant to take the stand cannot be used to supply a failure of proof by the prosecution." Since the circumstance of the defendant's failure to testify serves only to assist the jury in determining the credibility of and the inference to be drawn from evidence that is capable of being but is not explained or denied by his testimony, where no such evidence is presented in support of an essential element of the crime, this circumstance clearly cannot alone support a finding on that element against the defendant. (People v. Sawaya, *supra*; State v. Callahan, *supra*; see 2 Wigmore, *supra*, 179; 26 Yale L. J. 464, 469; 31 Mich. L. Rev. 226, 229, 231; 4 Cleveland Bar Journal 12; 3 Jour. of Crim. Law and Criminology, *supra*.) Defendant was therefore entitled to an instruction that his failure to testify may not by itself support a finding against him on an essential element of the crime. The refusal to give the proposed instruction, however, was not prejudicial. Ample evidence supporting each element of the crime was presented. Moreover, the strength of the evidence against the defendant makes it improbable that the jury could have disbelieved all the positive evidence supporting any essential [fol. 675] element of the crimes charged, thereby leaving defendant's failure to testify the sole circumstance in support of that element.

Defendant contends that the rational connection between a fact proved and the fact presumed required by the due process clause of the Fourteenth Amendment (People v. Scott, 24 Cal. 2d 774, 779 and cases there cited; Tot v. United States, 319 U. S. 463, 467) does not exist between the failure to deny or explain incriminating evidence and the inference of the credibility and unfavorable tenor thereof that these provisions permit the jury to draw. Defendant argues that reasons other than lack of power to explain favorably to himself or to deny such evidence, for example fear of disclosure to the jury of prior crimes through impeachment (Code Civ., Proc., sec. 2051; see 3 Wigmore, *supra*, 538; *ibid* 380) or fear of creating a bad impression by being a "poor witness," may prompt a de-

fendant not take the stand. In view of the even poorer impression normally created by not taking the stand (State v. Grebe, *supra*; see Bruce, 31 Mich. L. Rev. 226, 229, 231; 8 Wigmore, *supra*, 410; *ibid.* 424; 3 Jour. of Crim. Law and Criminology, *supra*), fear of creating a bad impression because of being a "poor witness" is not an impressive explanation of a defendant's silence. (See 22 Cornell L. Q. 392, 395, et seq.; 13 Jour. of Crim. Law and Criminology, 292, 293.) It is true that defendants convicted of prior crimes often do not take the stand because of fear that upon cross-examination their criminal record will be given to the jury. (See Code Civ. Proc., sec. 2051; 22 Cornell L. Q., *supra*; 9 Proc. Am. L. Inst. 202, 204, 207; 56 Reports of A. B. A. 137, 142, 144; 13 Jour. of Crim. Law and Crimi- [fol. 676] nology, 292, 295.) Clearly, however, the inference authorized need not be the only plausible one that can be drawn from the proved fact, to be rational under the due process clause. The inference is rational if the proved fact is a warning signal according to the teachings of experience. (People v. Scott, 24 Cal. 2d 774, 780; Morrison v. California, 291 U. S. 82, 90.) It is common experience that the failure to explain or deny adverse evidence that a defendant may reasonably be expected to explain or deny tends to show the credibility of such evidence and renders more probable the unfavorable tenor thereof. (Code Civ. Proc., secs. 1963(5), 2051(6); State v. Grebe, *supra*; see 2 Wigmore, *supra*, 164 et seq.; 31 Mich. L. Rev. 226, 229.)

There has been much criticism of the present state of the law, which places a defendant who has been convicted of prior crimes in the dilemma of having to choose between not taking the stand to explain or deny the evidence against him thereby risking unfavorable inferences, and taking the stand and having his prior crimes disclosed to the jury on cross-examination. (See 22 Cornell L. Q. 392, 395; 31 Mich. L. Rev. 40; 9 Proc. Am. L. Inst., *supra*; 56 Reports of A. B. A., *supra*.) In the present case defendant admitted two prior felony convictions for which he served terms of imprisonment in the Missouri state prison. The fact of the commission of these crimes was not offered or introduced into evidence and would have been inadmissible under the general rule with respect to prior crimes. (People v. Albertson, 23 Cal. 2d 550, 576, and authorities there cited.) [fol. 677] Had defendant taken the stand, however, the commission of these crimes could have been revealed to the jury

on cross-examination to impeach his testimony. (Code Civ. Proc., sec. 2051; *People v. Braun*, 14 Cal. 2d 1; see 28 Calif. L. Rev. 222; 3 Wigmore, *supra*, 380.) Since fear of this result is a plausible explanation of his failure to take the stand to deny or explain evidence against him (see 22 Cornell L. Q. 392; 13 Jour. of Crim. Law and Criminology, 292, 295; 9 Proc. Am. L. Inst., *supra*; 56 Reports of A. B. A. *supra*), the inference of the credibility and unfavorable tenor of such evidence that arises from this failure is definitely weakened by this rule of impeachment. This weakness, however, could not be revealed to the jury by counsel or court without prejudicing the defendant through the revelation of past crimes. Court and prosecutor are left no alternative but to comment on defendant's failure to deny or explain evidence against him as though the sole reason for his silence was that he had no favorable explanation. Any change in the law in this respect, however, must be made by the Legislature.

The prosecutor commented seven times in oral argument on defendant's silence. Defendant did not object below to these comments. In the absence of such objection it is the general rule that misconduct of the district attorney cannot be urged on appeal. (*People v. King*, 13 Cal. 2d 521, 527; *People v. Boggs*, 12 Cal. 2d 27, 40; *People v. Hight*, 37 Cal. App. 2d 498, 501.) Moreover, in the majority of [fol. 678] instances these comments were properly limited to specific parts of the evidence that defendant could reasonably be expected to explain or deny. The prosecutor approached the borderline of permissible comment, however, when he closed his oral argument as follows: "In conclusion, I am going to just make this one statement to you: Counsel asked you to find this defendant not guilty. But does the defendant get on the stand and say, under oath, 'I am not guilty'? Not one word from him, and not one word from a single witness. I leave the case in your hands." This statement could be construed as a declaration that the jury should infer guilt solely from defendant's silence, and if defendant had objected thereto, he would have been entitled to have the jury advised that his silence could not be given such construction. It is improbable, however, that the jury was misled. The prosecutor's statement followed his review of the evidence and could be construed in connection therewith as a conclusion that although the evidence established guilt, the defendant failed to explain or deny

it. A major part of the testimony and of the prosecutor's oral argument concerned the presence of six of defendant's fingerprints on the garbage compartment door. Fingerprints are the strongest evidence of identity of a person and under the circumstances of the present case they were [fol. 679] alone sufficient to identify the defendant as the criminal. (People v. Ramirez, 113 Cal. App. 204.)

The judgments and the order denying a new trial are affirmed.

Traynor, J.

We concur: Gibson, C. J.; Shenk, J.; Edmonds, J.; Carter, J.; Schauer, J.; Spence, J.

[fol. 679a] [File endorsement omitted.]

[fol. 680] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

PETITION FOR REHEARING—Filed January 18, 1946

The defendant was charged with the crime of murder by an information filed with the District Attorney of Los Angeles County. He was found guilty by a verdict which carried no recommendation and judgment of death was, therefore, pronounced.

He has appealed from the judgment of conviction of murder, and this Court on the 4th day of January, 1946, rendered judgment affirming his conviction. He now petitions for rehearing in this Court for the reasons to be given, and upon the following grounds:

I

The Decision of the Supreme Court of California Incorrectly Construes and Applies the California Constitutional Amendment in Holding That the Provisions Thereof Are Not in Violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 681]

II

The Court Errs in Holding That the Evidence Justifies the Verdict and Is Not Contrary to the Law and the Evidence.

III

The Court Errs in Holding That the Evidence in Support of the Judgment Is So Strong That It Is Improbable That But For Said Error the Jury Would Have Failed To Find the Defendant Guilty.

These grounds will be presented in the order above set forth.

I

The decision of the Supreme Court of California incorrectly construes and applies the California Constitutional Amendment in holding that the provisions thereof are not in violation of the Fourteenth Amendment to the Constitution of the United States.

The decision and opinion of this court regards Article I, Section 13 of the Constitution as not compelling the accused to testify, but merely allowing the court and counsel to comment upon his failure to explain or deny evidence against him and the jury to consider such failure.

The reasoning in *People v. Tyler*, 36 Cal. 522, applied to the present Section 13, shows in a realistic manner that the real effect of the provision is to coerce persons accused of crime to testify in their defense.

[fol. 682] The opinion cites "one of the draftsmen of the American Bar Association's Resolution which preceded the adoption of the California provisions", to the effect that the Constitutional provision was never intended to relieve the prosecution of the burden of establishing guilt beyond a reasonable doubt.

Petitioner insists that good intentions cannot make an unconstitutional law valid, and that said provisions are so plain and free from ambiguity as to exclude their amendment by judicial interpretation.

No one will question the erudition of Mr. Bruce or his associates but this seems to be a superb example of exquisite folly, resulting from wisdom too finely spun.

It is believed that in holding that the California code and constitutional provision in question do not infringe due process under the decision in *Tot v. United States*, 319 U. S. 463, 87 L. Ed. 1519, this court has overlooked vital and necessary implications which should be given consideration.

In view of the utterly indefinite character of the provision in placing no limitation as to the effect to be given by proof of the basic fact it accords to the jury *carte blanche* in the matter of the weight to be attached to the defendants having stood mute. Therefore, he must convince the jurors of his innocence or his testimonial denial or explanation may be of no avail. There is no middle [fol. 683] ground to be characterized as "some evidence", or even as sufficient to "balance the scales."

(Paul Brausman, "The Statutory Presumption," 6 Tulane Law Review, p. 493.)

There are two special and novel factors which remove any possible fancied connection which might be conceived on that comparison alone.

These are, the manner by which it compels the defendant to rebut the People's case and the all-embracing scope which his testimony is required to cover.

1. The ultimate fact of guilt, which Article 4 Section 13, authorizes the jury to infer, pushes into oblivion whatever evidence the defendant may have offered, regardless of its weight and convincing force.

These provisions compel the defendant to testify by bludgeoning him with the alternative that if he fails to testify and explain the evidence against him, no matter how many witnesses the defense may have called, and regardless of the convincing character of the proof that he may have produced by such witnesses, merely because he personally does not testify, the jury may infer his guilt.

2. But an equally unreasonable factor and capricious element is that the defendant must not only take the stand and testify to facts of which he may have knowledge if he would avoid the risk of the jury's inferences from his failure to do so, but he must "explain or deny any evidence [fol. 684] or facts in the case against," whether or not he has any knowledge concerning such facts and has had no opportunity to acquire such knowledge.

The opinion herein holds that said provisions do not require the accused to explain or deny evidence against him as to which he cannot reasonably be expected to have knowledge and that if the jury is so instructed no harm to him can result.

However, the provisions contain no exception to justify this interpretation. The language is plain and all-inclusive, and any instruction to the contrary would violate that language.

The salient points in these constitutional and code enactments are:

1. The accused is given the option to testify or to remain mute.

2. The jury may "consider" the failure of the accused to testify.

3. Even if he testifies, the jury may "consider" his failure to "explain or deny" any item of fact or evidence tending to incriminate him.

4. The jury may consider such failure for any purpose and as bearing upon any issue or element in the case, including the ultimate question of guilt or innocence.

5. The defendant is required to go forward by his own testimony, after the People rest their case, at the risk [for 685] of being found guilty on the inference or presumption to be drawn from his failure to explain or deny.

6. Consideration of the defendant's failure to explain or deny facts or evidence against him is not limited to matters as to which it has been shown that he must have personal knowledge.

7. The defendant is required to go forward and rebut the People's evidence by his own testimony to avoid the inference or presumption of guilt, even though by other evidence he may have adequately explained or otherwise rebutted the plaintiff's case in part or as a whole.

Each of these outstanding consequences are inherent in the statutory and constitutional provision with which we are concerned, because of the all-embracing language which they employ and the absence of any limitation upon the weight to be accorded or the purposes for which the jury may regard the defendant's failure to take the stand and personally rebut the People's case against him.

The fact which may be presumed or inferred, namely, that the defendant is guilty, has no rational connection with the fact or circumstance from which it may be inferred or

presumed, to-wit, that he "failed to explain or deny by his testimony evidence or facts in the case against him."

The basis and guide for determining the verity of the assertion in the above caption is judicial knowledge. In the leading case, *Tot v. United States*, 319 U. S. 463, 87 [fol. 686] L. Ed. 1519, it is said that the test of the validity of a statutory presumption is that to be valid, there must be "a rational connection between the facts proved and the fact presumed," and that "where the inference is so stained as not to have a reasonable relation to the circumstances of life *as we know them* it is not competent for the legislature to create it as a rule governing the procedure of courts." (Emphasis added.)

The basic facts in the presumption or inference authorized by the instant constitutional and code provisions are: The accused has been charged with having committed a crime; evidence in some degree tending to support the charge has been introduced by the People; the defendant failed to testify and did not attempt to personally explain or overcome the evidence produced by the state.

The ultimate fact to be presumed or inferred is: The defendant is guilty.

In *People v. Brown*, 81 Cal. App. 226, 242, the special prosecutor made an argument to the effect that had the defendants dared to do so they would have testified and that the failure of the defendants to testify "loaned undying strength to our charge." This argument was condemned by the court of appeal and it said: "Such is often not the reason for one declining to take the stand when charged with a public offense."

On petition for hearing in the Supreme Court it was [fol. 687] said that a holding of the court of appeal respecting the admissibility of certain evidence to impeach a defense witness was erroneous, and the Supreme Court adds: "In all other respect, however, we are in accord with the decision of the District Court of Appeal."

There are several reasons other than consciousness of guilt and the consequent fear of cross-examination and impeachment.

The consideration of the entire situation as it occurs practically in all the courts of this state, is sufficient answer. Defendants *usually* take the witness stand unless they have had a previous conviction of a felony. It is not because they are guilty of the crime charged that they refuse

to take the stand, but because of the fact that they are subject to impeachment by reason of such prior conviction of a felony, and thus an issue can be placed before the jury which prejudices them and deprives the accused of a fair trial on the specific question of guilt or innocence of the charge with which they are faced.

Other reasons are set forth in appellant's briefs herein.

The Applicable Law

There are several decisions of the United States Supreme Court which have settled the law on this question but the case of *Tot v. United States*, 319 U. S. 463, only will be quoted since, it is believed, it will suffice for present [fol. 688] purposes.

Tot was charged with violation of the Federal Firearms Act which provided, "It shall be unlawful for any person who has been convicted of a crime of violence or is a fugitive from justice to receive any firearms or ammunition which has been shipped or transported interstate or foreign commerce, and the possession of a firearm or ammunition by any such person shall be presumptive evidence that such firearm or ammunition was shipped or transported or received, as the case may be, by such person in violation of this Act.

The Opinion states, "The Government's evidence was that Tot had been convicted of assault and battery in 1925, and had pleaded non vult to a charge of burglary in 1932 in state courts; and that, on September 22, 1938, he was found in possession of a loaded automatic pistol."

The Court said:

"The Government argues that the presumption created by the statute meets the test of due process heretofore laid down by this court. The defendants assert it fails to meet them because there is no rational connection between the facts proved and the ultimate fact presumed, that the statute is more than a regulation of the order of proof based upon the relative accessibility of evidence to prosecution and defense, and casts an unfair and practically impossible burden of persuasion upon the defendant,

[fol. 689]. "The Government seems to argue that there are two alternative tests of the validity of a presumption created by statute. The first is that there be a

rational connection between the facts proved and the fact presumed; the second that of comparative convenience of producing evidence of the ultimate fact."

Justice Roberts disagrees with this theory upon seemingly incontrovertible reasoning. He says:

"We are of the opinion that these are not independent tests but that the first is controlling and the second but a corollary. Under our decisions, a statutory presumption cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary (468) because of lack of connection between the two in common experience."

Where a law permits the jury to make a presumption or inferences the basis of its verdict, the law is void.

Justice Roberts said:

"Whether the statute in question be treated as expressing the normal balance of probability, or as laying down a rule of comparative convenience in the production of evidence, it leaves the jury free to act on the presumption alone once the specified facts are proved, unless the defendant comes forward with opposing evidence. And this we think enough to vitiate [fol. 690] the statutory provision."

"In every criminal case the defendant has at least an equal familiarity with the facts and in most a greater familiarity with them than the prosecution. It might therefore, be argued that to place upon all defendants in criminal cases the burden of going forward with the evidence would be proper, but the argument proves too much. If it were sound, the legislature might validly command that the finding of an indictment, or mere proof of the identity of the accused, should create a presumption of the existence of all the facts essential to guilt. This is not permissible."

The Tot opinion states:

"The Congress has power to prescribe what evidence is to be received in the courts of the United States. The Section under consideration is such legislation.

But the due process clauses of the Fifth and Fourteenth Amendments sets limits upon the power of Congress or that of a state legislature to make proof of one fact or group of facts evidence of the existence of the ultimate fact on which guilt is predicated."

It seems obvious that the instant opinion conflicts violently with the foregoing decision.

The instant opinion concedes that it is a matter of conflicting probabilities—whether the failure to explain or deny has resulted from consciousness of guilt or some one [fol. 691] of numerous other reasons; the instant opinion at length discusses considerations of policy and convenience and thereby indicates that these questions are involved in arriving at its conclusion and were subjects which affected the adoption of said provisions.

The Tot opinion renders all such matters irrelevant and improper.

Hence, petitioner urges that this entire question be reviewed again.

II.

The Court Errs in Holding That the Evidence Justifies the Verdict and Is Not Contrary to the Law and the Evidence.

In petitioner's briefs heretofore filed and arguments to the court, this assignment has been presented quite fully from the standpoint of a review of the evidence and the permissible interpretations thereof.

The present purpose is to point out, from the opinion and decision of this court, reasons a fatal lack of evidence.

The opinion recites the circumstances which it holds strongly connected the defendant with the murder of Stella Blauvelt. These circumstances are:

1. Fingerprints on the surface of the inner door to the garbage compartment of the victim's kitchen.

2. The key to the apartment could not be found.

[fol. 692] 3. (a) Tops of woman's stockings which were taken from different places in defendant's room.

(b) At the end of each pair, away from the top was a tied knot or knots.

(c) They were not all of the same color.

(d) None of them matched with the bottom part of a stocking found under the body, or with others found in the victim's rooms.

5. The body had no stocking or shoes on it.

6. The deceased had been seen wearing stockings on the day of the murder.

7. There were stockings hanging in said kitchen and drawers in a dressing alcove, but no other parts of stockings were found.

8. The defendant gave the police false addresses.

9. When shown a picture of the deceased, defendant refused to look at it, stating that he did not like to look at dead people.

10. Deceased was in the habit of wearing rings with large sized diamonds and wore them on the fatal day.

11. A witness said he heard defendant ask someone whether he was interested in buying a diamond ring.

12. Testimony that screws were hanging in the hinges of the door, also fragments of wood.

13. The garbage pail was not in its customary place.

[fol. 693] Assuming that all of the above circumstances were established by admissible evidence, petitioner contends that it is insufficient to justify a reasonable belief that he was the murderer.

The opinion recites the prosecution's theories but they do not concern this discussion.

Unless, by some other circumstances, the accused was connected with the crime, numbers 2, 12 and 13 are entirely irrelevant.

Items 3 to 7 inclusive could not logically or legally warrant more than a conjecture or suspicion that the defendant had some connection, perhaps remote and innocent, with the murder.

Taken singly and collectively they did not show; That any one other than the victim removed her stockings; and no other evidence showed that she had not done so; that any stocking found in defendant's room had ever been in the

victim's room or in her possession; the fact that there were knots in the stocking was meaningless in the absence of proof that knots were involved in the murder.

Items (3d) and 7 tend to show that the stockings found in defendant's room were not connected with any possessed by the deceased.

Appellant insists that it is far-fetched and unwarranted to say as the opinion does that the presence of these women's stockings imply "a fetish or sexual degeneracy." Surely [fol. 694] every unmarried man who has some article which women wear in among his possessions is not to be stigmatized as a degenerate. To so consider this circumstance is to take judicial knowledge that men who do these things have no innocent motive; that they have no women relatives or friends for or from whom they were obtained, perhaps for some temporary purpose.

Surely humanity is not commonly believed and known to be so low.

The opinion views these stockings, wholly unconnected with the deceased as a "logical link in the chain of evidence", but it fails to say or suggest, except by the suggestion of fetish, with what link this alleged one connects.

It is urged that this is a matter which deserves reconsideration.

Items 10 and 11 could not warrant more than a suspicion. Without some proof that the ring about which Adamson is said to have spoken was not owned by him, or was one of the victim's, or that the defendant had no rings of his own, his possession of a diamond ring is no *evidence*, and supplies no link in the supposed chain of evidence to identify the defendant as the robber.

Item 9 is not susceptible of even a suspicion of the essential connection. Many people do not like to gaze at dead bodies. It is common knowledge that at funerals only relatives and close friends usually view the body.

Item 8, false statements to the police, have been held properly received in evidence as an admission against interest on the theory of concealment, but a mere admission of concealment, alone or with other similar admissions, has never been held sufficient to connect an accused with a crime.

Item 12 has been mentioned. It should be added that, without proof that the fragments had the appearance of

freshness, they would be insignificant, and the same is true of the presence of the screws.

The only real item of evidence as a circumstance connecting Adamson with the murder, including the prosecution theories, is the fingerprints.

Assume that the crime was committed by someone as the prosecutor contended, the presence of fingerprints is a circumstance which, aside from the defendant's right to remain mute, could call for an explanation.

But the burden is still on the People to prove the defendant guilty beyond a reasonable doubt, and for some reason not explained the experts failed to give their opinion as to whether the imprints were made at all recently or may have been old and hence unimportant.

The opinion herein mentions no evidence of this nature and we have found none.

In view of the circumstances of this case, wherein the [fol. 696] investigation and the securing of the fingerprints promptly after the crime was committed by someone, the circumstance of the presence of fingerprints on the door alone is irrelevant, or a weak or strong link to connect the defendant with the crime, depending on proof of when they were imprinted,

From the foregoing, petitioner contends that the decision in this case requires reconsideration. Otherwise, the wrong and an innocent man may pay the death penalty for another's foul murder.

III

The Court errs in holding that the evidence in support of the judgment is so strong that it is improbable that but for said error the jury would have failed to find the defendant guilty.

Petitioner believes that it has been shown that the evidence against him in this case is decidedly weak, and that no incriminating circumstance proved points unerringly to his guilt, but are all susceptible of interpretation in favor of innocence or as being harmless.

It is conceded in the opinion filed by this Court that error was committed in the instructions given and refused. Thus, the court said in its opinion:

"The jury, however, is concerned with the scope and nature of the consideration that it may give to defendant's failure to explain or deny incriminating evidence [fol. 697] and in the present case should have been instructed that the defendant's failure to deny or explain evidence presented against him does not create a presumption or warrant an inference of guilt, but should be considered only in relation to evidence that he fails to explain or deny."

The court also says in its opinion:

"The following proposed instruction, however, should have been given:

'You are instructed that the fact that the prosecutor has a right to comment on the failure of the the defendant to take the stand does not relieve the prosecution of the burden of establishing guilt beyond a reasonable doubt and by competent and legal evidence.' "

These instructions were requested by the defendant and refused by the court. The existence of error, therefore, is apparent. The question remains as to whether such error gave rise to a miscarriage of justice.

In *People v. O'Bryan*, 165 Cal. 55, this Court first undertook to consider what constitutes a miscarriage of justice. In that case, the defendant had been taken by the sheriff before the grand jury and sworn and questioned concerning his connection with the crime. He was not in any way warned of his right to refuse to answer the questions or that they might be used against him. His statements fell short of constituting a confession, but did constitute admissions damaging to him.

This court, in affirming the conviction, said:

"Section 4½ of Article 6 of our Constitution must be given the effect of abrogating the old rule that prejudice is presumed from any error of law. Where error is shown, it is the duty of the court to examine the evidence and ascertain from such examination whether the error did or did not in fact work any injury. The mere fact of error does not make out a prima facie case for reversal, which must be overcome by a clear showing that no injury could have resulted.

On the other hand, we do not understand that the amendment in question was designed to repeal or abrogate the guarantees accorded persons accused of crimes by other parts of the constitution or to overthrow all statutory rules of procedure and evidence in criminal cases."

And:

"It is an essential part of justice that the question of guilt or innocence shall be determined by an orderly, legal procedure in which the substantial rights belonging to defendants shall be respected."

And further:

"We are not substituted for the jury. We are not to determine, as an original inquiry, the question of the defendant's guilt or innocence. But, where the jury [fol. 699] has found him guilty, we must, upon a review of the entire record, decide whether, in our judgment, any error committed has led to the verdict which was reached. If it appears to our satisfaction that the result was *just, and that it would have been reached if the error had not been committed*, a new trial is not to be ordered." (Italics is ours.)

In *People v. O'Bryan*, every material matter covered by the admissions of the defendant was shown by other evidence, which was not contradicted. It is apparent, therefore, that a very different question was presented and where the errors simply resulted in cumulative testimony being placed before the jury, from the situation which exists here, where the rights of the appellant in a case in which conflicting inferences might reasonably be drawn from the evidence were not protected by proper instructions upon important questions of law—questions which, indeed, were the very most important presented in this case.

The question of the proper construction of Section 4½ of Article 6 of the Constitution was again before this court in the case of *People v. Fleming*, 166 Cal. 357. In that case, the Court said:

"In view of the very grave doubt as to the guilt of the defendant of the crime charged against him and in view of the nature of the acts charged against the

defendant as shown by the testimony of the witnesses [fol. 700] for the prosecution, we are of the opinion that, despite the general instructions of the court to the jury to the effect that they must base their verdict exclusively on the evidence, the conduct of the special prosecutor in the matters we have been discussing, which clearly constitute misconduct on his part, contributed materially to the verdict that was rendered."

In the instant case, the court invokes the rule that no objection being made to the argument of the prosecutor or at the time that his misconduct in the argument cannot be urged on appeal. We have always thought there is a tendency to carry this rule beyond the demands and, indeed, beyond the purposes of justice. However, we do not seek to question it here. What we are trying to do is to point out that by reason of that argument, it was particularly important that the instructions which were refused erroneously should have been given. Even though it were conceded that standing alone the mere failure to give those instructions would not likely affect the verdict of the jury, still when the prosecutor made language which could be "construed as a declaration that the jury should infer guilt solely from defendant's silence", then the cause of justice imperatively demanded that the jury be informed as a matter of law, that guilt could not so be inferred. The prosecutor has the closing argument. What he says is the last thing heard by the jury. It is that which is freshest and most active in the jurors' mind when they retire. In [fol. 701] the absence of instructions to the contrary, the jury naturally would assume the accuracy of the argument of the Deputy District Attorney, and would regard the silence of the defendant as a circumstance in the case from which an inference of guilt could be drawn.

In *People v. Bennett*, 79 Cal. App. 76, it was held that any act or action of a trial court in the trial of a criminal case which must necessarily have the effect of denying the accused a trial by a fair and impartial jury will not be mitigated by the terms of Section 4½ of Article 6 of the Constitution. It is our understanding that injury is no longer presumed from error; that the burden is cast upon a defendant upon appeal to show affirmatively that there has been a miscarriage of justice.

People v. Hoffman, 199 Cal. 155.

In the civil case of *Mintzer v. City of Richmond*, it was held to be incumbent upon the party appealing to show not only abstract error but error prejudicial to him upon the facts in evidence. That, then, is the burden which devolved upon appellant; that that burden he assumed, for he did show that on the vital question of the effect of his failure to testify the Court did refuse to give such instructions as if given and followed would have prevented the jury from following the argument of the District Attorney, which the Court properly has held constitutes misconduct.

For these reasons, we submit that there has been such a [fol. 702] miscarriage of justice as under the Constitution requires a new trial; that appellant has successfully assumed the burden of showing some very much more than mere abstract error; that he has shown errors which lent plausibility to an argument against appellant which ought not to have been made and which the court cannot say was not adopted by the jury as one of the reasons, and perhaps a principal reason, why their minds were satisfied as to the guilt of appellant.

Respectfully submitted, Morris Lavine and Milton B. Safier, by Milton B. Safier, Attorneys for Petitioner.

[fol. 702a] Received copy of the within Petition for Rehearing this January 18, 1946.

Robert W. Kenny, Attorney General, by Frank Richards, Deputy.

[fol. 703] IN SUPREME COURT OF CALIFORNIA

Crim. 4622

PEOPLE

v.

ADAMSON

ORDER DENYING PETITION FOR REHEARING—January 31, 1946

Appellant's petition for rehearing denied.

Dated: January 31, 1946.

[Vol. 704] IN THE SUPREME COURT OF CALIFORNIA

Criminal No. 4622

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,
Respondent,

VS.

ADMIRAL DEWEY ANDERSON, Defendant; Appellant

On Appeal from the Superior Court in and for the County
of Los Angeles. (Superior Court No. 98,734)

JUDGMENT—January 4, 1946.

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It Is Ordered, Adjudged, and Decreed by the Court that the Judgments and the Order denying a New Trial of the Superior Court in and for the County of Los Angeles in the above entitled cause, be and same are hereby affirmed.

I, A. V. Haskell, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 4th day of January, 1946, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 4th day of February, A. D. 1946.

A. V. Haskell, Clerk, by L. F. White, Deputy. (Seal 247.)

[fol. 704a] [File endorsement omitted]

IN THE SUPREME COURT OF CALIFORNIA

Cr. No. 4622

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and
Appellee,

v.

ADMIRAL DEWEY ADAMSON, Defendant and Appellant
Appeal denied April 8, 1946. Gibson, (Copy illegible)

PETITION FOR APPEAL—Filed April 3, 1946

[fol. 705] Aggrieved by the final decision of the Supreme Court of the State of California, on January 4, 1946, and by the order of the Supreme Court of California denying his petition for rehearing on January 31, 1946, appellant, Admiral Dewey Adamson, hereby prays that an appeal be allowed to the Supreme Court of the United States and for an order permitting appellant to proceed in forma pauperis, and that said order, in lieu of a bond, act as a supersedeas.

Morris Levine, Milton B. Safier, Attorneys for Appellant.

[fol. 706] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed April 3, 1946

Appellant Admiral Dewey Adamson assigns the following errors in the record and proceedings in said case:

I

The Supreme Court of the State of California in its opinion, decision, determination and judgment, erred in holding that the 1934 amendment to the California Constitution, Article I, Section 13, permitting comment by the court or counsel on defendant's personal failure to explain or deny any evidence or facts in a criminal case against him and the similar provision of the California Penal Code, Section 1323,

inherently, and as construed and applied in this case, do not violate due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

II

The Supreme Court of the State of California in its opinion, decision, determination and judgment erred in [fol. 707] holding that the 1934 amendment to the California Constitution, Article I, Section 13, and California Penal Code, Section 1323, inherently, and as construed and applied in this case, are not unconstitutional in shifting the burden of proof to the defendant and infringing the presumption of innocence and thereby denying due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

III

The Supreme Court of the State of California in its opinion, decision, determination and judgment erred in holding that the 1934 Amendment to the California Constitution, Article I, Section 13 and California Penal Code, Section 1323, allowing comment by the court or counsel on defendant's failure to explain or deny any evidence or facts in a criminal case against him inherently, and as construed and applied in this case, are not unconstitutional as violating the privileges or immunities clause of the Fourteenth Amendment to the Constitution of the United States.

IV

The Supreme Court of the State of California in its opinion, decision, determination and judgment erred in holding that where the prosecutor repeatedly commented to the jury upon the defendant's failure to take the stand, to the extent of telling the jury:

"And here we started out in this case with a defendant, [fol. 708] as counsel says, clothed, with the presumption of innocence. But as this testimony moved forward piece by piece, bit by bit, article by article, this testimony stripped this defendant of that presumption of innocence, and finally, at the conclusion of the People's case, when he did not take the stand, or did not put any witnesses on the stand, he stood there with that presumption removed, based on the evidence in this case."

that it was not a violation of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

V

The Supreme Court of the State of California in its opinion, decision, determination and judgment, erred in holding that said Article I, Section 13 and said Penal Code Section 1323 do not violate the due process clause of the Fourteenth Amendment of the Federal Constitution in that they each authorize the jury to presume that the defendant who fails to explain or deny any evidence against him is guilty as charged, although there is no reasonable or logical connection between such presumption and the basic fact upon which it is based, to wit, failure to testify, and said opinion, decision, determination and judgment in so holding; itself violates the due process clause of the Fourteenth Amendment to the Federal Constitution.

[fol. 709]

VI

The Supreme Court of the State of California in its opinion, decision, determination and judgment, erred in holding that a law which permits and in effect encourages the jury to give additional or conclusive weight to any and all evidence introduced by the People against the defendant and to draw unrestricted inferences therefrom against the defendant with respect to any such evidence which the defendant might reasonably be expected to explain or deny, where he fails to testify, even though he may have produced proof of convincing character, does not permit and encourage the jury to infer and presume the defendant's guilt from his mere failure to testify or to personally, under oath and during the trial, explain or deny any evidence against him, and by such error said opinion, decision, determination and judgment itself violates and sustains a law which violates the defendant's rights to due process of law and to the protection of the privileges and immunities clause of the Fourteenth Amendment to the Constitution of the United States.

VII

The Supreme Court of the State of California in its opinion, decision, determination and judgment, erred in holding that Admiral Dewey Adamson was not denied due

process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States by the introduction in evidence of portions of women's stock- [fol. 710-713] ings, which were admittedly not part of the deceased's stockings, and which served no other purpose than to influence or inflame the passions and prejudices of the jury, and to imply to this negro defendant a sex fetish and a low moral character.

For which errors appellant prays that the said judgment of the Supreme Court of the State of California in the above-entitled cause be reversed.

Morris Lavine, Milton B. Safier, Attorneys for Appellant.

[fol. 714] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL

The appellant, Admiral Dewey Adamson, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment of the Supreme Court of the State of California of January 4, 1946, (order denying petition for rehearing entered January 31, 1946,) and from each and every part thereof and having presented his petition for appeal, assignments of error, and prayer for reversal pursuant to the applicable rules and statutes,

It Is Now Here Ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the judgment of the Supreme Court of the State of California.

It Is Further Ordered that the Clerk of the Clerk of the Supreme Court of California have prepared and certified a transcript of the record, proceedings, and judgments and order in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Supreme Court of the United States within thirty days from this date.

Wm. O. Douglas, Associate Justice of the Supreme Court of the United States.

Dated this fifteenth day of April, 1946.

[fol. 715] Citation in usual form showing service on Robert W. Kenny, omitted in printing.

[fol. 716] [File endorsement omitted.]

[fol 717] IN THE SUPREME COURT OF CALIFORNIA

[Title omitted]

PRAECIPE FOR RECORD—Filed April 3, 1946

To the Clerk of the Supreme Court of the State of California:

You will please prepare the following record in the above-entitled cause for the Supreme Court of the United States:

1. Complete reporter's transcript of all testimony and evidence offered or received and all rulings of the court, pages 1 to 492, inclusive, also the reporter's transcript of the argument of counsel contained in the reporter's supplemental transcript on appeal, pages 1 through 75;

2. Clerk's transcript as follows:

(a) The information, pages 1 to 5, inclusive;

(b) Arraignment and plea, page 6;

(c) Withdrawal of public defender, page 7;

(d) Minutes of the trial, pages 8 to 18;

(e) Verdict, pages 17, 18;

(f) Instructions given, pages 19 through 32;

[fol. 718] (g) Instructions refused, pages 33 through 59;

(h) Verdicts, pages 60, 61;

(i) Motion for new trial, pages 62 to 65;

(j) Order denying motion for new trial and judgments, pages 66 to 71;

(k) Commitment on death sentence, pages 72 to 74;

(l) Notice of appeal, page 75;

(m) Notice for preparation of record, pages 76 to 78;

(n) Grounds for appeal, page 78;

(o) Certification of County Clerk, page 80.

3. Opinion and judgment of the Supreme Court of the State of California of January 4, 1946;

4. Appellant's petition for rehearing;

5. Order of California Supreme Court of January 31, 1946, denying petition for rehearing;

6. Remittitur;
7. Affidavit for leave to proceed in forma pauperis and order thereon;
8. Petition for appeal;
9. Assignments of error;
10. Prayer for reversal;
11. Order staying execution;
12. Order for clerk to prepare and certify transcript;
13. Statement of jurisdiction on appeal;
14. Citations;
15. Notice to the Attorney General and Statement of [fol. 719] Rule 12, Subdivision 3, Rules of the Supreme Court.
16. Præcipe.

Morris Lavine, Milton B. Safier, Attorneys for Appellant.

[fols. 720-722]. Clerk's Certificates to foregoing transcript omitted in printing.

[fol. 723] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF RECORD—Filed May 20, 1946

Comes now the appellant and designates the points upon which he intends to rely on this appeal as the following:

I

The Supreme Court of the State of California in its opinion, decision, determination and judgment, erred in holding that the 1934 Amendment to the California Constitution, Article I, Section 13, permitting comment by the court or counsel on defendant's personal failure to explain or deny any evidence or facts in a criminal case against him and the similar provision of the California Penal Code, Section 1323, inherently, and as construed and applied in this case, do not violate due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

II

The Supreme Court of the State of California in its opinion, decision, determination and judgment erred in

[fol. 724] holding that the 1934 Amendment to the California Constitution, Article I, Section 13, and California Penal Code, Section 1323, inherently, and as construed and applied in this case, are not unconstitutional in shifting the burden of proof to the defendant and infringing the presumption of innocence and thereby denying due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

III

The Supreme Court of the State of California in its opinion, decision, determination and judgment erred in holding that the 1934 Amendment to the California Constitution, Article I, Section 13 and California Penal Code, Section 1323, allowing comment by the court or counsel on defendant's failure to explain or deny any evidence or facts in a criminal case against him inherently, and as construed and applied in this case, are not unconstitutional as violating the privileges or immunities clause of the Fourteenth Amendment to the Constitution of the United States.

IV

The Supreme Court of the State of California in its opinion, decision, determination and judgment erred in holding that where the prosecutor repeatedly commented to the jury upon the defendant's failure to take the stand, to the extent of telling the jury:

"And here we started out in this case with a defendant, [fol. 725] as counsel says, clothed with the presumption of innocence. But as this testimony moved forward piece by piece, bit by bit, article by article, this testimony stripped this defendant of that presumption of innocence, and finally, at the conclusion of the People's case, when he did not take the stand, or did not put any witnesses on the stand, he stood there with that presumption removed, based on the evidence in this case."

that it was not a violation of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States:

V

The Supreme Court of the State of California in its opinion, decision, determination and judgment, erred in holding that said Article I, Section 13 and said Penal Code Section 1323 do not violate the due process clause of the Fourteenth Amendment of the Federal Constitution in that they each authorize the jury to presume that the defendant who fails to explain or deny any evidence against him is guilty as charged, although there is no reasonable or logical connection between such presumption and the basic fact upon which it is based, to wit, failure to testify, and said opinion, decision, determination and judgment in so holding, itself violates the due process clause of the Fourteenth Amendment to the Federal Constitution.

[fol. 726]

VI

The Supreme Court of the State of California in its opinion, decision, determination and judgment, erred in holding that a law which permits and in effect encourages the jury to give additional or conclusive weight to any and all evidence introduced by the People against the defendant and to draw unrestricted inferences therefrom against the defendant with respect to any such evidence which the defendant might reasonably be expected to explain or deny, where he fails to testify, even though he may have produced proof of convincing character, does not permit and encourage the jury to infer and presume the defendant's guilt from his mere failure to testify or to personally, under oath and during the trial, explain or deny any evidence against him, and by such error said opinion, decision, determination and judgment itself violates and sustains a law which violates the defendant's rights to due process of law and to the protection of the privileges and immunities clause of the Fourteenth Amendment to the Constitution of the United States.

VII

The Supreme Court of the State of California in its opinion, decision, determination and judgment, erred in holding that Admiral Dewey Adamson was not denied due process of law guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States by the introduction in evidence of portions of women's stockings,

[fol. 727] which were admittedly not part of the deceased's stockings, and which served no other purpose than to influence or inflame the passions and prejudices of the jury, and to imply to this negro defendant a sex fetish and a low moral character.

The defendant also designates, as the record on appeal the entire reporter's transcript and the Clerk's Transcript on appeal, and the entire record as forwarded to this court.

Morris Lavine, Milton B. Safier, Attorneys for Appellant.

[fol. 727a] Rec'd copy of the within this May 18th, 1946.

Robert W. Kenny, Attorney General, Frank Richards, Dep., Attorneys for Appellee.

[fol. 727b] [File endorsement omitted.]

[fol. 728] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—June 10, 1946

On Consideration of the motion for leave to proceed in *forma pauperis* in this case,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

Mr. Justice Jackson took no part in the consideration or decision of this motion.

[fol. 729] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—June 10, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Jackson took no part in the consideration or decision of this question.

Endorsed on cover: In forma pauperis. Enter Morris Lavine. File No. 50,912. California, Supreme Court, Term No. 102. Admiral Dewey Adamson, Appellant, vs. People of the State of California. Filed May 7, 1946. Term No. 102, O. T. 1946.